1947-48

K

File No. B. Security Measures/47. Pt. I

Legal DEPARTMENT

B BRANCH

616

P56E

Subject:— A bill to enable government to adopt more effective measures during disturbed conditions in the Province of Bombay.

L. A. Bill no. ~~XXV~~ of 1947.

Bom. Act. no. ~~VI~~ of 1947.

File No. B. Security Measures/47. Part. I & II.

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Miss) K.V.G.
16-5
SC.

Office of the R.L.A.

The requisite draft of the Bombay Security Measures Bill together with the Statement of objects and Reasons is sent herewith.

2. New clause 6 to provide for the repeal of the Bombay Security Measures Ordinance, 1946 and for saving any obligation or liability incurred thereunder has been inserted.

3. The subject-matter of the Bill falls under entries 1,2,3,37 and 39 in List II and entries 1 and 2 in List III in the Seventh Schedule to the Government of India Act, 1935. As none of the provisions of the Bill is repugnant to the provisions of any earlier Federal law or existing Indian Law relating to any matter falling in the concurrent Legislative List, it will not be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

The Bill requires the previous sanction of the Governor under section 108(2)(ii) of the Government of India Act, 1935. The Bill does not require any recommendation under the said Act. The Bill attracts the operation of clause (a) of section 52(1) of the Government of India Act, 1935.

4. H.D. is requested to obtain orders of Government on this Bill and forward it to L.D. as soon as possible to enable this Department to publish the same in the Gazette in good time before the session.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs.

(3)

Office of the R.L.A.

A revised draft Bill is sent herewith.

2. Clause 1, 2 and 3 of H.D. draft have been combined & in clause 1.

3. Clause 2(1) :- The words "if it considers such order necessary" in the H.D. draft clause 4(1) have been omitted as being unnecessary. Government will not make an order unless it considers it necessary and if the Government is satisfied of the facts stated in that sub-section, then, it cannot fail to make such an order.

Sub-clauses (2) and (3) of H.D. draft clause 4 have been omitted as being superfluous in view of the provision separately made for delegation in revised clause 21. The necessary provision that an order made by an officer to whom the power is delegated shall be valid for a limited period or that the Provincial Government can be enforced by means of conditions to be imposed in the order of delegation under clause 21.

4. Clause 3 provides for representation against an order of detention. No provision has been made in H.D. draft what action is to be taken by the Provincial Government on such a representation. A new clause 4 has, therefore, been added to provide for necessary orders to be passed by the Provincial Government.

5. Clause 5 :- It is not clear why the provision contained in sub-clause (1) is restricted to employments connected with matters falling within Provincial Legislative List only. The reference to Concurrent List also has been added.

A reference to officer making the order in sub-clause (2) has been omitted as there is no such officer referred to in clause 5(1).

Sub-clauses (3) and (4) have been recast and combined into revised sub-clause (3).

P.T.O.

Explanation 3 proposed by Secretary, H.D. at 'A' on p. 7, being a substantive provision, has been embodied in new sub-clause (5); of section 15 of Act XXIV of 1946.

6. Clause 6(5) has been revised on the lines of section 8(4) of the C.P. Act XV of 1946.

7. Clause 7(2) :- There seems to be some confusion in H.D. draft clause 9 proposing new section 19(b) in the Criminal Law Amendment Act, 1908, in the expression "or such class thereof as may be specified in the order". This has been recast into "by any class of persons or organization specified in the order", on the lines of section 7(1) of the C.P. Act of 1946. H.D. should verify whether this carries out its intention correctly.

8. Clause 9 :- Clause 10 of the H.D. draft refers to an order prohibiting the carrying of any explosive. It is presumed that this is intentional. Before any reference to explosive can be made in the proposed new section, it is necessary to amend the relevant sections of the District and City of Bombay Police Acts. The necessary provision has been made in clause 27. H.D. might confirm that this is the intention.

9. Clause 10 :- The latter portion of H.D. draft clause 11 is unnecessary and has been cut out.

10. Clause 13(1) :- Provision has been made, as directed by H.M. (L) at the time when the Criminal Law (Bombay Amendment) Ordinance was discussed with him, for limiting the period of appeals both against capital and other sentences to fifteen days.

Sub-clause (3) refers to making of orders under section 491 of the Code. This has been restricted in respect of any person triable by a Special Judge. This will restrict the ban on orders under section 491 of the Criminal Procedure Code only in respect of persons triable by a Special Judge.

11. Clause 19 :- The expression "this Act" has been changed to "sections 16-20".

12. Clause 23 :- The reference to amending Ordinance No. III of 1946 has been omitted, so also the reference to any other matters specified in that Act. The reference to the Provincial Government has also been omitted as being of no significance.

13. Clause 25 :- The provision made in H.D. claus 22 that no inquest shall be held under the Coroners' Act in the case of death arising out of an offence triable under that Act is inept. The proviso proposed becomes part of section 9 of the Coroners' Act and the offence will be triable under the proposed public Security Measures Act. The clause has been recast to bring out the intention correctly.

14. The last clause 27 in H.D. draft providing that the Act shall be in addition to and not in derogation of any other Act etc. has been omitted as being unnecessary.

15. The amendment proposed in H.D. draft clause 8 for the insertion of a new section 16A in the Criminal Law Amendment Act, 1908, has been transposed as clause 26.

The reference to "trained" in new section 16A propose by Secretary, H.D. at p. 7 has been deleted. I do not think an association can be said to be trained. In do not think an association can be said to be trained. In any case that will be covered by the words "is organized or equipped".

16. Provision has been made in clause 23 to provide for the repeal of both the Ordinances.

17. The subject matter of the Bill falls under entries 1, 2, 3, 37 and 39 in the Provincial Legislative List and entries 1 and 2 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. As the provisions in section V of the Bill which seek to enhance punishment for certain offences falling under the Indian Penal Code and also seek to change the procedure included in the Code of Criminal Procedure, 1898, are repugnant to the provisions of the said Codes which are existing Indian Laws relating to entries 1 and 2

in the Concurrent Legislative List, it would be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

18. The Bill requires the previous sanction of the Governor under section 108(2)(ii) of the Government of India Act, 1935. It also affects the special responsibility of the Governor under section 52(1)(a) of that Act. It also requires recommendation under section 82 of that Act.

19. None of the provisions of the Bill falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

20. The Statemtnt of Objects and Reasons sent by the H.D. is in order.

21. The H.D. is requested to sendadvance copies of the Bill to the Government Central Press for printing the same with a request to keep the ty pe standing and to the Oriental Translator to Government with a request to keep the tr nslations in regional languages ready. H.H.(L) has directed that the H.D. should circulate the Bill to all the Ministers at once ~~and once~~ and send copies thereof to this Department for publication immediately.

Sd/- D.V.Vyas.
Remembrancer of Legal Affairs

U.R. to H.D. No. 1814, dated the 22nd February 1947.

(Miss) K.V.G.

15-D
4C.

7 (9)

Office of the R.L.A.

It has been decided by the Cabinet meeting held on the 27th January 1947 that clause 2 of the Bombay Security Measures Bill at pp.15-23 ante should be omitted from this Bill and that the same may be incorporated in the Omnibus Police Bill.

The Bombay Security Measures Bill is intended to replace the Ordinance of the same name promulgated under section 88 of the Government of India Act, 1935, as the Ordinance shall not be in force after the period described in that section. If clause 2 is deleted as proposed from the Bombay Security Measures Bill and if the Omnibus Police Bill which provides for a similar clause is not enacted into law before theformer Bill is passed, clause 3 of the Bombay Security Measures Bill which refers to section 42 of the Bombay District Police Act, 1890 and particularly to corrosive substances will not be consistent with facts. It is therefore advisable not to amend the Bombay Security Measures Bill in the manner proposed.

2. It is proposed also to incorporate clauses 2 and 3 of the Bill at pp. 13-15 of H.D. file 1427/5 in the Omnibus Police Bill. Clause 2 of the Bill corresponds to sections 5 and 6 of the Ordinance at pp.3-5 of H.D. file 1427/5. The duration of the Ordinances is of a limited period as described in section 88 of the Government of India Act, 1935. If the Omnibus Bill is not passed into an enactment before the expiry of the period of the Ordinance there will be a gap between the expiry of the period of the Ordinance and the coming into force of the consolidated Police Act. It is therefore advisable not to amend the Bill in H.D. file No. 1427/5 in the manner now decided.

Sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 1654, dated the 18th February 1947.

K.V.G./15-5

4c.

Bombay Public Security Measures Bill.

The Preamble :-

I request the word "public" be put up before the word "order" to conform with the wording of item 1 in List II of Schedule VII of the Government of India act. cf Sec 2. of Bill, when the words are "public order".

Sec. 2(1)(e)

This as well as certain other provisions require that the Bill should be reserved for the consideration of the Governor General under Sec. 107(2) of the Constitution act, that particular provision infringes in contract an then in the concurrent List. I have not been able to find it in the file, that the Bill is to be so reserved. See in this Connection Sec.5, also Sec.8, Sec.18 & 20.

Sec. 2-(b)

I think that only the D.M. to be the person to be satisfied and not the A.D.M. I may point out that it is doubtful if by reason of Sec 10(2) of the Criminal Procedure Code, any order made thereunder, the A.D.M. could be substituted in the D.M. for the purposes of Sec. 5 of this Bill. If it is desired that any other officer not-above the A.D.M. should act also, he should be included in the section.

Sec.6.

I doubt if failure to discover or apprehend an offence can be made an offence in the manner in which it is sought to be done.

it is to be done by this section what offences are due meant? That is no _____ for a member of the public attempting to discover or apprehend on suspicious.

So for as I can see the only comments which occurs to me the _____ short time. The act seems in order.

Sd/-

I agree entirely with the comments of the Advocate General on the Public Security Measures Bill. They are perfectly sound and may be adopted.

2. I have already pointed out at "A" on p. 76 that the Bill will have to be reserved for the consideration of the Governor-General.

3. The Advocate General's comments on section 6 of the Bill are also important and I recommend that they may be adopted.

K.VG./17-5

4C.

No. 2807

Legal Department,

Bombay Castle, 22nd March 1947.

From

D.V.Vyas, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject :- A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 20th and 22nd March 1947, respectively.

2. The Bill affects the special responsibility of the Governor under section 52(1)(a) of the Government of India Act, 1935. It does not fall within the purview of clause 4(a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 1, 2, 3, 37 and 39 in List II and entries 1 and 2 in List III in the Seventh Schedule to the Government of India Act, 1935.

4. As the provisions in section V of the Bill which seek to enhance punishment for certain offences falling under the Indian Penal Code and also seek to change the procedure included in the Code of Criminal Procedure, 1898, are repugnant to the provisions of the said Codes which are

P.T.O.

existing Indian laws relating to entries 1 and 2 in the Concurrent Legislative List, it would be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. I am to add that since the amendments made by the Select Committee in the Bill the Assembly accepted a further amendment in clause 7(3) of the Bill by changing the penalty prescribed by it from five years to one year.

6. I am also to forward herewith six copies of each of the

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.
2. Report of the Select Committee together with the Bill as amended by the Select Committee.
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.
4. Bill as read for the third time and passed by the Bombay Legislative Council.
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 6th, 19th and 20th March 1947 and of the Bombay Legislative Council dated the 22nd March 1947.

items Nos. 1 to 4 and two copies of item No. 5 of the papers noted in the margin.

7. I am to state that the Bombay Security Measures Ordinance, 1946, would cease to operate on the 24th March 1947. It is, therefore, necessary that this Bill should after receiving the assent of His Excellency the Governor General be published in the Bombay Government Gazette as an Act before the 24th March 1947. It is requested that His Excellency the Governor General may be moved to give his assent to the Bill before the 24th March 1947 and to convey the assent <u>by telegram</u> as the new Act must come into force on that date and also to communicate the date on which the assent is given.

I have the honour to be,

Sir,

Yours most obedient servant,

Sd/-D.V.Vyas.

for Secretary to the Government of Bombay,

Legal Department.

(Miss) K.V.G.
15-3
4 C.

13

(19)

No. G.S. 1039
Office of the Governor's Secretary,

Government House,

Bombay, 29th March 1947.

From

D. Symington, Esquire, C.I.E., I.C.S.

Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Subject:- The Bombay Public Security Measures Act, 1947.

Sir,

With reference to the correspondence resting with my letter No. G.S. 569 of the 23rd of March, on the above subject, I am directed to forward herewith the authentic copy of the Bombay Public Security Measures Bill, 1947, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-

Secretary to the Governor of Bombay.

K.V.G./15-5

4C.

Bills.

A Bill to consolidate and amend the law relating to public Safety, maintenance of order and the preservation of peace and tranquillity in the Province of Bombay.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1990
Bombay Castle, 27th February 1947.

Memorandum from the Home Department dated the 27th February 1947 :- Transferring for necessary action, the papers relating to a Bill to consolidate and amend the law relating to public safety, maintenance of order and the preservation of peace and tranquillity in the Province of Bombay.

RESOLUTION:- The Bill with the Statement of objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 27th February 1947, as Bill No. XXV of 1947.

2. The Bill and the Statement of objects and Reasons should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 1st March 1947.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd/- K.M.CHITNVIS.
Assistant Remembrancer of Legal Affairs.

To

The Manager, Government Central Press, Bombay(with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Secretary Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies

P.T.O.

For the use of the Legal Department),

The Home Department,

The Oriental Translator to Government,

The Secretary to the Bombay Legislative Assembly,

The Director of Publicity, Bombay.

} With a copy of the Bill and the S.O.R.

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with five extra copies of the Bill.

(Misc) SV.C.
15-8

40.

STATEMENT OF OBJECTS AND REASONS.

In times of unrest it is necessary that Government should have powers to take effective measures to deal with breaches of the public peace and to prevent a breakdown in the maintenance of essential services. The proposed Bill, which comes into force in any part of the Province in whole or in part for such periods as Government considers necessary, provides for restriction and detention of those who are dangerous to the public peace, allows the imposition of collective fines, enables Government to declare unlawful, associations which arouse apprehension that they may be employed for the use of physical force, provides for restrictions on drills and parades and on the wearing of uniforms similar to Police and military uniforms. It also provides whipping as punishment for certain offences, other than those for which the ordinary law applies, and provides for Special Courts with speedy procedure to try offences which may be specified.

Dated 24th February 1947. (Signed) Morarji Desai.

By order of the Governor of Bombay,

Sd/- K.K.CHITNVIS,

Assistant Remembrancer of Legal Affair

Bombay, dated 27th February 1947.

(Miss) K.V.C./15-3

4C.

(COS) 29

Acts.

Publication of the Bombay Public Security Measures Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2310.
Bombay Castle, 23rd March 1947.

Letter to the Secretary to the Governor, No.2307, dated the 22nd March 1947.

Letter from the Secretary to the Governor, No.S.S.569, dated the 23rd March 1947 :-

"With reference to your letter No. 2307 of the 22nd of March, forwarding, for the assent of His Excellency the Governor-General, an authentic copy of the Bombay Public Security Measures Bill, 1947, I am directed to inform you that intimation has been received from the Secretary to the Governor-General (Public) that His Excellency the Governor-General has assented to the above Bill on Sunday the 23rd March 1947."

RESOLUTION :- The law should be published as Bombay Act No. VI of 1947 in the Bombay Government Gazette, dated the 23rd March 1947.

2. The Act should be translated into Marathi, Gujrati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By order of the Governor of Bombay,

Sd/- D.V.Vyas.
Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department),
The Home Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Council,
†The Secretary to the Bombay Legislative Assembly,
The Director of Publicity,
} WITH a copy of the Act.

*With five extra copies of the Act.

(Miss) K.V.C./15-5

4c. sub 5/6 5/6

L. A. BILL No. XXV OF 1947 (A BILL TO CONSOLIDATE AND AMEND THE LAW RELATING TO PUBLIC SAFETY, MAINTENANCE OF PUBLIC ORDER AND THE PRESERVATION OF PEACE AND TRANQUILITY IN THE PROVINCE OF BOMBAY).

Mo-III Bk Hb 88a—1

L. A. BILL No. XXV OF 1947 (A BILL TO CONSOLIDATE AND AMEND THE LAW RELATING TO PUBLIC SAFETY, MAINTENANCE OF PUBLIC ORDER AND THE PRESERVATION OF PEACE AND TRANQUILLITY IN THE PROVINCE OF BOMBAY)

Mr. MORARJI R. DESAI: Sir, I beg to introduce L. A. Bill No. XXV of 1947 (A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay) as passed by the Legislative Assembly.

The DEPUTY PRESIDENT: The Bill is introduced.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. XXV of 1947 (A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay) be read a first time.

Question proposed.

Mr. MORARJI R. DESAI: Sir, the Bill that is now moved in this hon. House, for its consideration is no doubt a Bill which confers wide powers on the executive. Ordinarily, Government would not have come before the House with a request for arming it with these powers, and it is with great reluctance and after a good deal of consideration that Government came to the conclusion that, in the interest of law and order in this Province, it is necessary that Government should have the powers which are mentioned in this Bill. We know that during the last few months, several incidents have occurred in the different parts of this country. Fortunately, our Province is very quiet at present, but I do not think that anybody can say that the causes which contributed to these disturbances have disappeared.

Then again, Sir, the declaration of the British Government to quit this country by June 1948 has also created a peculiar situation in this country.

In view of the fact that there are various forces working in this country with different motives, this declaration has added to the general sense of uncertainty which is likely to prevail during the next few months. The experience that

* Passed by the Assembly on 20th March 1947.

[Mr. Morarji R. Desai]

Government has had during the last few months in this City and in other parts of the Province has shown that it is necessary for Government to take prompt and effective measures to prevent such happenings from taking place. It may well be argued why Government did not take such steps before the disturbances took place when Government knew that such steps were likely to prevent trouble. We could not do so in the beginning of the trouble because we had no such power, and though we took powers under the District Police Act and the City of Bombay Police Act for taking preventive steps in emergencies, those powers were taken when the disturbances were actually in progress. Once disturbances start they take a formidable shape which makes it difficult to bring them immediately under control and that always lengthens the process of restoration of peace. There is no doubt in my mind that in all such matters it is better and more profitable in the interests of peace in this Province that stringent preventive action is taken in the very beginning when trouble is apprehended, so that no trouble may effectively arise. As I said, though there is now peace and quiet in this Province, it is difficult to say that peace and quiet will continue to prevail if Government is not careful in watching the situation incessantly and ready to take effective steps whenever it apprehends trouble which is likely to take place. The tenseness in the situation has not yet completely subsided. It has subsided on the surface but the causes which led to this tenseness have not yet disappeared and we still find that in different provinces disturbances continue to take place. All these things have their repercussions in all parts of the country. It is, therefore, very essential that Government should have power to take effective steps in times of trouble so that the Province may be spared from further disturbances.

The powers that are contemplated in this Bill are clearly stated in the different chapters. The first chapter relates to the powers of detention, externment, internment and restriction of movement of the persons from whom trouble is apprehended. Then there are powers under clause 5 for guaranteeing the continuance of essential services during times of stress so that the health and safety of the people may not be put in danger. Under this clause the powers that are vested in Government are intended to be utilised only in cases where the essential services are involved and where the stoppage of these services is such as to create disturbances. These powers will be utilised only on such occasions to guarantee the health, safety and peace of the population of this province. It is not intended to use this clause against economic strikes which can be treated under the special legislation which has been made for the purpose.

The second chapter relates to the imposition of collective fines. The Ordinance for the levy of collective fines has been applied wherever Government thought it necessary to do so in order to control disturbances. These powers have been used in the cities of Bombay and Ahmedabad with very good results. The public have welcomed the use of this ordinance. Not only have they welcomed it, but they have criticised us for not taking these powers by an ordinance at an earlier stage.

Chapter 3 deals with control of camps and uniforms of volunteer forces. There is a likelihood of volunteer forces arising which might use uniforms similar to those of the military or the police and which might also get trained for being utilised in violent disturbances, and because of this likelihood it is necessary that such forces should be controlled. Whereas Government does not want to put in obstacles in the way of volunteers who are trained and used for peaceful purposes, for social work, Government cannot allow the creation and use of private armies, and it is with this object in view that Government is taking the powers which are

[Mr. Morarji R. Desai]

mentioned in clauses 7 and 8. It may have been noted by the hon. Members of this House from some of the reports that have appeared in papers that in some places persons clad in police uniforms have taken part in the disturbances: We have information that some people have such an intention in this Province. But, after all, this information cannot be proved in a court of law. Nobody can say that such movements are carried on in such a way that they can be proved in a court of law. It has, therefore, become necessary to control such activities from the very beginning. When Government is convinced that institutions are meant not for the *bona fide* purpose of social work and peaceful movement but merely for taking part in disturbances, it becomes necessary for Government to control the movements of such volunteer forces and also to see that they do not endanger public peace and tranquillity.

The power sought under chapter IV is not a new power. The power already vests in the Government by virtue of an ordinance, but the ordinance will soon lapse and Government will be deprived of the power if this Bill does not become law by the appointed date.

Chapter V deals with special courts. Since the promulgation of the ordinance it has been in operation in the City of Bombay where a Special Judge has been disposing of some of the riot cases in the city, and with very good results. This ordinance, Sir, has been widely welcomed by all sections of the people. I may point out that this power is going to be used only in abnormal cases and not for the administration of ordinary criminal justice. It is provided in this chapter that the Special Courts will be enabled to try cases in such a manner that they are disposed of promptly and effectively. For that purpose, committal proceedings are done away with, the recording of evidence in a complete form also is curtailed and the provision of the inquest system in the city of Bombay is also done away with for purposes of these proceedings. Many times it has been noticed that such inquest proceedings have taken six months and more with the result that the cases concerned could not be brought before a court of law for more than six months. Hence the need for such a provision.

The last chapter is a miscellaneous chapter and it does not give any new power to the Government. Chapter VII has a section which enables the Government to declare volunteer forces unlawful in cases which are mentioned in connection with camps and uniforms. For this purpose it is proposed to amend the Criminal Law Amendment Act by section 27. As I said before, this provision will be utilised only in cases where the Government has adequate reasons to believe that any association or associations are carrying on their work with a view to achieving their objective by violent means or with a view to creating or aggravating any disturbance of public peace. There is no intention on the part of Government to ban volunteer forces in general, especially the volunteer forces formed with a view to giving training to young men and women so that they may be better fitted for doing social work and for helping the community in general in a peaceful manner.

These in short, Sir, are the main provisions of the Bill brought before the House. I do not think it is necessary for me at this stage to go at great length into the merits of the Bill, because the Bill has been discussed by the public and in the press for some time past now in great detail. Before closing, I should like to make one thing clear, and that is that, whatever may be the apprehensions of some people regarding the use of this measure by the Government, Government can give the assurance that the Bill is meant to be used for abnormal situations for the prevention of disturbances and for the prevention of the use of violence by any section of the

[Mr. Morarji R. Desai]

people in achieving their object. No Government would be worth its name, and especially a popular Government would not deserve to be popoular if it did not safeguard the peace and tranquillity of the province and if it did not enable its population to carry on its daily life without any fear. No democractic Government can allow any violent forces to carry on their activities in a violent manner with a view to upsetting the democractic form of Government and putting themselves in power. Whereas it is the inherent right of every person to work peacefully either by himself or in association with others for a system of government which he or the association thinks is the best in the interests of the country, it certainly cannot be the right of any person or of any association of persons to work for upsetting a popular Government by violent means by putting the safety of the people and the peace and tranquillity of the province in great danger. Every democractic Government owes a duty to the people it governs to see that peace and tranquillity are safeguarded. It is with a view to discharging its fundamental duty that the Government has come before the House with a request for the powers contained in this Bill. It is no doubt true that such powers are likely to be misused in some cases; but then, there is nothing in the world which cannot be misused, and simply for fear of probable misuse, we cannot omit to use the powers which are necessary in the interests of the people as a whole. Government will always be very careful and will make all the effort that is humanly possile to see that the powers are used in a proper manner and that their misuse is reduce to the minimum.

Sir, ABDUL LATIF HAJI HAJRAT KHAN: I rise on a point of order, Sir. In doing so, I refer to rule 84 (1) of the Bombay Legislative Council Rules. The rule says—

" .....Provided that no such motion shall be made before the expiry of seven clear days from the despatch to each member of a copy of the Bill with the Statement of Objects and Reasons..... "

The Bill was sent to the members of this House on the 20th March. So, today is the third day from that date. Seven days have not yet elapsed. Of course, the rule further says

" unless the President, in exercise of his power to suspend this provision, allows the motion to be made ".

The Bill is a very important Bill and we naturally require sufficient time for its consideration. Sir, you are the custodian of the rights and privileges of this House and you have always upheld the rights of the Opposition, and I hope that in this case also you will help us. All that I say is that we have to wait only for four days more and then we can take up this Bill for consideration.

Mr. SHANTILAL H. SHAH: Sir, no speech can be made on a point of order. The hon. Member should confine himself to stating the point of order.

Sir BEHRAM N. KARANJIA: Sir, I am of the opinion that such a point of order should not be upheld, because the question is one of the safety of the people, and in this matter there should be no delay. We know that the ordinance lapses on the 24th and, therefore, it is very essential that this Bill should be taken up for consideration today.

Mr. SHANTILAL H. SHAH: Further, such a point of order ought to have been raised before the motion for first reading was made. The motion for the first reading as also a speech thereon have already been made.

The Hon. the PRESIDENT : We all know the speed with which this Bill was passed in the lower House and in view of the urgency of the Bill, under the powers given to me, I suspend the provision contained in rule 84 (1). Ordinarily however, the rule will not be suspended. The Bill may be proceeded with.

Sir BEHRAM N. KARANJIA (Bombay City *cum* Bombay Suburban District) : Sir, I am glad that all apprehensions in the public mind are removed by the assurance given by the Hon. the Home Minister. Sir, I have gone through the clauses of this Bill, and there is no doubt that some of the clauses are very drastic. But, looking at the disease, I believe that such a strong remedy is absolutely necessary. Until peace and tranquility are restored in the province, such strong measures are absolutely necessary. I have myself seen the disturbances in which one man kills another. Even small children take part in the nefarious acts. Children are set up by elderly people to take part in looting, throwing stones, etc. I do not find any provision in this Bill under which such children will become punishable. There should be some provision in that respect.

Another point that I wish to impress upon the Home Minister is that he should make full enquiry into each and every case after a man is detained or externed. He should not rely upon the reports of the subordinate officers.

Then, there is one more point about drills and wearing of uniforms. There is an association called the Parsi Pioneer Association. The members of this association are boys who have served in the Army, Navy and Air Force during the last war. The idea of this association is to train the boys for doing volunteer work. They are also encouraged to join the Home Guards and many of them have done so. In view of this, I think the Hon. Minister will exempt this association from the operation of this Bill.

After having made this submission I think that this is a step in the right direction which our Government are taking in order to prevent disturbances in the province. Therefore, I have pleasure in supporting the Bill.

1-00 p. m.

Mr. R. R. BAKHALE : Sir, since I received this Bill a few weeks ago and since I have been considering it, two very sad and melancholy thoughts have been passing through my mind. One is the very tragic coincidence that every political reform in this country should either preceed or follow a political upheaval, a political strike and the consequences that follow from it. The second thought that has been running through my mind is that it is unfortunate that it should be the lot of the very party which has been opposing—and, in my opinion, correctly—coercion and repression in this country at the hands of a foreign government during the last sixty years, the party which has made tremendous sacrifices of almost every description in upholding liberal and honest standards of administration, in upholding the liberties of the people, that it should be compelled by force of circumstances to sponsor a Bill like the one that we are considering to-day. I listened with great attention to the speech which the Hon. Minister delivered. I have heard his speeches in the past and I heard his speech today also. It was an entirely unworthy speech. I detected in it an element of sorrow and regret and I could see that he was not very happy over the introduction of this Bill. I sympathise with him and his Government. Sir, I should like to make it clear at the beginning that even that sympathy cannot go beyond certain limits. There are certain consideations of a very fundamental character which, whatever the Government in power may be, have got to be observed

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in the interests of purity of public administration. When the former Government introduced very repressive and coercive legislation the public had no sympathy whatsoever with that Government. The main reason for that was that that Government's main function was to keep the supremacy of British rule in this country. These are not, and cannot be, the motives of an indigenous Government. I recognise that point at once and, therefore, whatever I may say as to the merits or demerits of this Bill I have very considerale sympathy with this Government in the difficulty in which they have found themselves, and no one will be more glad than I to help them to the extent that it is possible for me to do.

If I have read correctly the 1908 Criminal Law Amendment Act which was a repressive measure in this century brought by the bureaucratic Government at Delhi, if I have read correctly the 1919 Criminal Law (Emergency Powers) Act, popularly known as the Rowlatt Act or the Black Act, if I have also read correctly the 1932 Emergency Powers Act, and if I have read correctly the provisions of this Bill, what is it that I find ? I find, as I shall show a little later, that even though the colour, complexion and creed of the Government have changed, the result of their deliberations that I see before me in the form of a Bill has not undergone any change. This Government seems to be going more or less on the same lines on which the former Governments have gone. This Government seems to be relying like the former Governments more on the long arm of the law and less on doing something which it is absolutely necessary to do for removing such elements of discontent as we see in this province. The discontent that we see in every province has different phases and different causes. And it is this discontent that has got to be eliminated if anything solid and substantial has to be achieved. What they are trying to do by this Bill is to remove the symptoms of the disease and not the disease itself. They may succeed to a very substantial extent in the beginning. The previous Governments did succeed in those days to a large extent, but that was only a short-term success, which changed subsequently. What happened during the 1919 agitation after the Rowlatt Act was passed ? I think I am correct in saying that if there is any change which has happened in this country more than anything else to put the benches opposite in the power that they are in today, it is the Rowlatt Act. It was that Act that gave an opportunity to the Indian National Congress to start its new weapons of public and political agitation in the country, the passive resistance, the satyagraha, the civil disobedience, the no-tax campaign, and so on. The Rowlatt Act was never brought into operation, but the movement was crushed even without it. People were oppressed and repressed mercilessly. The British Government had the weapons of oppression and repression to their credit, but what is the result to-day ? The result is that the Party which the British Government wanted to crush and kill is the Party which is ruling over us to-day, and this is directly the result of the weapons of repression and oppression that the past Government used against everybody. I want, Sir, very honestly and sincerely that this should not happen. Every Government has its day. No doubt a Government that goes wrong is a Government that must go, but I would like this Government to go at its proper time, when it becomes unpopular at the polls, when it is difficult for it to carry on, and there is some other Party which can form a Government on constitutional and democratic lines. Till then, I want this Government to continue. But what is the use of my wanting to do a particular thing when this Government is determined to use such measures for the removal of discontent in this Presidency ? My fear is that this Bill will create more discontent than there was before. It may add to the unpopularity of this Government which, if what appears in the press is substantially correct, is gradually rising due to shortage of food, shortage of cloth,

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shortage of this and shortage of that. These are difficulties which are inherent in the situation, and I recognise, Sir, that a Provincial Government like this may not be able to tackle the problem to the extent to which it should or it can, but there are certain other things which this Government does and which adds to its difficulties and to the discontent of the country as well.

Sir, when I listened to the speech of the Hon. Minister, I was struck by one very important point—and I concede that it is a point in his favour—that now that the British Government has declared the dead line at June 1948 to leave India, forces are bound to arise in this country to capture the seat of Government. I quite visualise the contingency, and I am at one with Government in any fair and reasonable steps that it may take in resisting any illegal, unlawful or violent attempt on the part of any section of the public to capture power by means other than constitutional and peaceful means. If this Government is to be changed, I want it to be changed by normal methods, but if I am told that someone wants to change this Government by a revolution, I am not going to allow it. I do not want any change in this country to take place on the strength of a revolution. I believe in evolution, and I am afraid I believe a little too much in it, because history tells us that slowness of evolution makes revolution attractive, but slowness is the very essence of evolution. We cannot help it, whatever it is. If Government has reasons to think that there are forces in this Presidency which are likely to use violent power and strength to overthrow this Government, I am at one with it. I do not want anything to take place by means of arms, but if Government thinks that the method which it has adopted in this Bill is the method by which it can stop such a contingency taking place, then it is very much mistaken. I wish I were wrong, but my fear is that I am correct.

This Bill is primarily intended to be used against those people who use violent means, who do violent propaganda or who, in any other respect carry on violent agitation—it may be with the object of overthrowing this Government or it may not be with that object. But there again, I believe that my friends, the Communists, are the people who do believe in violence, who do believe in secret methods and who do believe in doing things which are unconstitutional or which are anything but constitutional. I think they are doing that and there is no secret of it, but even if we are to use against them all the weapons that are to be found in this Bill my fear is that Communism will still flourish, because there are pockets in the body politic of this Presidency which are suffering from all sorts of diseases and it is these diseases which are the most vulnerable factors for an agitator to take advantage of. I, therefore, with all respect, suggest to this Government that the better course for it would be to tackle the problems of food scarcity and cloth scarcity, if Government is anxious to keep communism and terrorism at arm's length. It is no use telling this House, and through it the public, that because there is Communism, Government has brought forward this Bill to fight Communism. You are not going to fight it successfully with this Bill.

For a political crime or for using some fire-arm, the punishment of whipping, a most barbarous and inhuman punishment, is prescribed. Can there be a bigger crime in this Province than the crime of profiteering at the expense of the lives of the people, and have Government been able to do anything in the matter? If Government has not been able to do anything, then a hundred pieces of legislation of this type are not going to be of any use to it. Is it because that it is eas-

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for you to do so that you pass a law of whipping against the poor people for carrying arms and so on? Is it because the people are poor that you pass orders and prescribe punishments of death and transportation? You have not the guts to pass an ordinance against profiteers and black-marketing that is going on in the streets of Bombay under your very nose and you keep your eyes absolutely open all the twenty-four hours of the day. Don't you see these things? If you do, then why don't you remedy them? Why are you not making an attempt at least?

I also recognise that there are certain factors in the situation, such as the questions of imports, procurement of supplies from other Provinces and such other matters connected with the other Provincial Governments or the Central Government or the foreign Governments. I know that there are such factors, but even to the extent to which it is possible for you to do a particular thing in regard to black-marketing and profiteering, I am afraid you have not been able to do anything, and if a Communist makes his inroads into such regions and if he succeeds, is it his fault or our fault? My fear is that it is our fault, and therefore, whatever powers you may take to yourself to safeguard against the contingencies enumerated by the Hon. the Home Minister, they may not be of much avail unless the economic and social conditions, or the roots of social evil, which exist to-day as a result of post-war conditions, are eradicated to a very substantial extent.

Sir, we are told by the Hon. Minister that although his Bill is vague, yet it can be used absolutely impartially and limited to those people who use or preach violence. I wish, Sir, it were so. If you read the proceedings of the Imperial Legislative Council of 1908 and 1919, or if you read the proceedings of the Bombay Legislative Council of 1932, when these repressive measures were discussed, you will find the Hon. the Home Member, the Hon. the Law Member, the Hon. this Member and the Hon. that Member of behalf of Government giving assurances, solemn assurances on the floor of the House, that the Bill would be limited to this, would be limited to that, would not be utilised for any other purpose, and so on and so forth. I do not suggest that they gave assurances which they did not want to carry out. No, I do not want to say that. They gave assurances quite honestly, they wanted to carry them out equally honestly. But the law has got to be administered by hundreds and thousands of subordinates of Government, and it is not proper to expect that the spirit and the letter of the law as enacted will be followed in practice all the time. And it is for this reason that it has been laid down by constitutional lawyers, by thinkers on constitutional law, that all legislation—whatever you want to legislate for—should be precise and to the point and should not exceed the limit beyond which you do not want that legislation to go. I quote, Sir, to this House only one sentence from a standard book by Dicey on this important matter. He says:—

"In Europe the authority that the Executive is given over the legislature is much more than the authority which the Executive enjoys in Great Britain. There has always been this difference between the continental jurisprudence and the British jurisprudence."

And after watching carefully for a series of years the working of this kind of legislature this is what Dicey has written in his famous book on constitutional law.

"The study of European politics now and again reminds English leaders that wherever there is discretion there is room for arbitrariness, and that in a republic no less than under monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects."

This, Sir, is a very important quotation from the book written by a standard author on constitutional law, and I am most anxious that instead of following

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continental jurisprudence in this part of the world we should rather follow this author's writing which is born out of experience and study. We are on the eve of achieving what we have been trying to achieve for the past 100 years and I would like our Government to copy the principle laid down by Dicey and not the one which they propose to follow in this particular case.

There is another standard which jurists and constitutional writers have laid down for considering a piece of legislation and that standard I had better quote from one sentence of a very illustrious Judge of England, Lord Shaw, in one of his famous judgment:

"In the exercise of power that the Government have, the plainest teachings of history and the dictates of justice demand that, on the one hand, Government power and, on the other hand, individual rights, these two, shall face each other as party and party."

That is to say, there should be no discretion and the man should have the liberty to defend himself even against the most powerful body in the country which is the Government. Considered from that point of view if you study this Bill, you will find that the phraseology adopted is unfortunately too vague and too general, and a police officer even of some training and with good intentions may not be able to carry out all the assurances that the Hon. Minister has given here. It is this that makes us shudder and prevents us from supporting whole-heartedly a measure of this kind.

It is on account of the vagueness and generality of the phrases employed, without provision of any safeguards at all, that we find the Bill extremely difficult to accept, anxious though we are to be with the Government in their effort to root out violence, anarchy, and so on from this land. It is this consideration that weighs with us in considering the measure before the House.

1-30 p.m.

Having said this much, Sir, I shall now proceed to the several clauses of the Bill. They have been read out to us by the Hon. the Home Minister. Well, Sir, if we are to consider this Bill merely on the basis of what the Hon. Minister has said—and he did that in a very sweet manner—and if we are to consider the merits of the Bill merely by reading its phraseology, I am afraid we shall land ourselves into very serious difficulties. We must first have some idea of what distinguishes a coercive or repressive legislation from an ordinary penal legislation. It is then only that we shall be in a better position to understand the implications of the special provisions in this Bill and the complications that this Bill may lead to. Not being a lawyer myself, I am not in a position to give in the manner I would have liked the substance of the previous coercive legislation and compare it with the provisions of this Bill. But I have done it in my own way. I speak subject to correction, and there is no better person, Sir, than yourself to correct me since you are a famous lawyer. I have attempted in my own humble way to prepare on a very general and broad basis a comparative analysis of the provisions of the 1908 Act (the Criminal Law Amendment Act), of the 1919 Act (the Rowlatt Act), of the 1932 Act (the Bombay Emergency Powers Act) and of this Bill. And, what is it that we find in this comparative analysis? Before I give the analysis, let me first take the titles and the preambles of the various measures.

The title of the present Bill is:

"A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the province of Bombay."

It looks as if it is a permanent piece of legislation. But it is temporary; it is meant to be used in an emergency and in extraordinary circumstances, but the

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title does not give that impression. Now, let us take the titles and the preamables of the 1908, 1919 and 1932 Acts. They show at once their limited and restricted scope and their emergent and temporary character, which the present Bill does not. The 1908 Act provides for the more speedy trial of certain offences and the prohibition of associations dangerous to public peace. The 1919 Act supplements the ordinary criminal law and gives emergency powers to Government for dealing with anarchical and revolutionary movements. The 1932 Act confers special powers on Government in case of an emergency such as is likely to arise from Communist, terrorist and civil disobedience movements. The 1947 Bill, the Bill under consideration, consolidates and amends the law relating to public safety.

The Acts of 1908 and 1919 specify, in their schedules, the offences triable under their special procedure. The 1932 Act restricts itself to offences created by it, to special procedure. Under the 1947 Bill, any offence is triable; and the restriction of limited procedure extends over the entire field of offences.

The third point is about the special procedure. Under the 1908 Act, the Central or Provincial Government issues an order to the Magistrate who has taken cognisance of a scheduled offence, to apply the procedure under the Act. The magistrate proceeds to enquire whether the prosecution evidence is sufficient to put the accused on trial and also considers the statement of the accused, if voluntarily tendered. The accused is barred from attending the trial, unless the magistrate otherwise directs, and from being represented by a pleader. But he can submit a list of his witnesses for being examined. Supplementary witnesses are allowed; and the record of their evidence is supplied to the accused. The magistrate can discharge the accused on the ground of insufficiency of evidence or send him for trial on his being satisfied with the evidence. In the latter case, he frames a charge, makes an order, supplies a copy of it to the accused and sends up the case to the High Court. A special bench of three Judges tries the case. Jury is not allowed. The provisions of the Criminal Procedure Code do not apply to these proceedings; but those of Chapter XXIII of the Code do apply with some modifications. Bail is not allowed to a person once remanded to custody.

The special procedure under the 1919 Act is initiated with the submission, by an officer to the Chief Justice, of a written information against the accused. The Chief Justice has the power to get amended the information, a copy of which is supplied to the accused, and thereafter nominates a court of three Judges. The trial opens with reading the information and then follows the prosecution story. The subsequent procedure is on the lines of the trial of warrant cases by magistrates. On a charge being framed, a fortnight's adjournment is allowed. The procedure to be followed is that in the Criminal Procedure Code and evidence is to be recorded in full. Till the close of the prosecution case, no question is to be put to the accused; but before he is put on defence, he is entitled to being examined on oath and is liable to cross-examination. The provision is made giving a right of reply to the accused.

Under the 1937 Act, cases are triable by a Presidency or First Class Magistrate. The offences are cognisable and non-bailable. Summary procedure under Chapter XXII of the Criminal Procedure Code is permissible. No adjournment, as a rule, is allowed.

The 1947 Bill sets up special courts for the trial of cases. A Special Judge can take cognisance of offences without the accused being committed to his court for

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trial, may record only the substance of the evidence, may refuse to summon witnesses and may not adjourn a trial. The normal procedure under the Criminal Procedure Code, if not inconsistent with the Bill, is to apply to cases. The Bill provides for appeal to the High Court.

The 1908 Act does not provide for detention and for arrests.

Under the 1919 Act, the case of a person suspected to be concerned in anarchical or revolutionary movement is referred with the necessary material to a judicial officer qualified to be a High Court Judge, for opinion. If thereafter action is found to be necessary, the person concerned is asked to execute a year's bond, notify his residence, remain within a locality, abstain himself from certain activities and report himself to the police. Such order remains in operation for a month, unless its period is extended. After the order is made, an investigating authority consisting of three persons, two of whom to be high judicial officers an one to be a non-official, considers the whole case and its material, makes su able inquiry into facts and other connected matters, gives reasonable facilities to the person concerned to have his say and reports its opinion to Government. The latter either discharges the order originally made or issues a fresh order which remains in force for a year. After the lapse of this second order, a third order to continue a year more is allowed, but the person concerned is given a chance to make a representation and the investigating authority examines the representation and makes a report. A visiting committee to report on the welfare and treatment of the restrained persons is provided. The procedure so far described is provided for also in the case of a person, similarly suspected, against whom an order for arrest, confinement to a locality and search can be made.

An hon. MEMBER : The hon. Member is reading his speech.

Mr. R. R. BAKHALE : I am just reading a summary and I have already told the President about it. Sir, under the 1932 Act, a person suspected of acting prejudicially to public peace, etc. is arrested and kept in custody for fifteen days, a period which can be extened to two months. Only a statement of the arrested person is allowed to be sent to Government. A person similarly suspected can be detained in a particular place, ordered to stay in a particular locality or to remo himself to a particular locality and ordered to conduct himself in a particular manner. Such order is to remain in force for a month. A review of such order is provided.

The 1947 Bill provides for all these things, but lays down no limit for the oper tion of the orders issued or for review.

This is briefly the substance of the most important and essential provisions of the repressive legislation that was undertaken in the past and is being undertaken at present in this country and in this province. Those who already know what the law is or those who have followed me to the extent to which I have followed the summary of this legislation may have noticed that if a comparison between the 1919 Act and this Bill is to be made with regard to most essential points, namely, arrests, suspicion, review and trial, you will find that this Bill is much too vague, much too wide, gives far more excessive powers to the executive than even the Rowlatt Act did. What is the opinion expressed by an eminent lawyer on the provisions of the Rowlatt Act ? I will give only one quotation. This is what Sir Tej Bahadur Sapru says—

"I have no hesitation in saying that it (the Bill) is wholly wrong in principle, unsound in its conception, dangerous in its operation and too sweeping and too comprehensive, indeed far more comprehensive than many of us are prepared to admit at the present moment."

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In view of this, I make a most earnest appeal to Government that they should reconsider the matter. If extraordinary powers are needed, they have a right to demand such powers from us and so far as I am personally concerned, I am prepared to give those powers, provided the legislation which Government have brought forward is a legislation which is restricted to the purpose for which it is meant and is not so vague as the one which we now see before us. It has been well said by a great writer that extraordinary weapons of great potency and far-reaching range, if made easily accessible in the armoury of the executive, are apt, by their very sight and facility and swiftness of execution, to tempt the possessor into ill deeds. This is what Shakespeare says " the sight of things that do ill deeds makes ill deeds done." It is in this spirit that I appeal to Government to reconsider their position.

The situation that is likely to develop during the next 15 or 18 months is, as far as I can see, going to be a very dangerous situation. I am anxious that there should be at least peace and tranquillity, if not harmony, in this province, when this transfer of power takes place from the British to the Indian hands and to the extent to which powers are necessary to have this transfer made in an atmosphere of goodwill and harmony, I am prepared to support this Government in any measure that they may bring forward, even if that legislation may be of a coercive character. If, therefore, the principle of this Bill is to arm the Government with emergency and temporary powers to tide over the difficulties that are associated with the problem of the transfer of power, I accept the principle whole-heartedly and support them in their effort. But the provisions that Government have introduced in this Bill are of such a nature that taking the Bill clause by clause I cannot support them in their details. I note that we have got to expedite our business. We were quite ready to consider this Bill even earlier, but perhaps Government were not ready and, therefore, unfortunately the matter has got to be rushed through. Even in this affair of rushing through, we are willing to go with them to the extent to which we can honestly go, and I hope that when the next stage of discussion begins, it may be possible for Government to accommodate us and enable us to do something which will help substantially to put a check on the future situation which is looming large before our eyes.

Mr. MORARJI R. DESAI : Sir, I was carefully listening to the hon. Member who just now gave his views on this Bill. I was also considering all the time his request for making this legislation more specific. That, I understand, is his main request. He has granted—and I am thankful to him for it—that it has not been a pleasant task for us to have come to this House for powers of this nature. We have all along fought for the maintenance of civil liberties and for combating coercive and repressive measures. Viewed superficially, the criticism would be correct that whereas we were loudly opposing measures of this nature in the past we have given up our principles as soon as we have come to power. I would submit, Sir, that this would be true if only a superficial view is taken. We have long been considering the necessity and propriety of arming ourselves with powers of this nature, and it is because of that long consideration that we were unable to bring this Bill before the House at an earlier stage. Though the criticism is made today by responsible people that we should have come forward with a request for such powers six months earlier, I feel that if we had come before the legislature with a request for such powers six or eight months earlier we would not have got the support which we are generally receiving today. And it is the essence of democracy that a Government which wants to rule democratically should see that it carries the bulk of the people with it in whatever it does. I understand, Sir, that this should be the main consideration in whatever we do, and it is because we are convinced that the bulk of the people

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is convinced by the painful circumstances of the past few months about the necessity of arming Government with such powers that we have come forward to seek the sanction of this House to assume these powers. We should have failed in our duty if we had not done so. It is no doubt a sad and tragic fact that in this country there should have been a foreign Government for a long time. That fact has been responsible for many incidents in the past and that fact has been responsible for the coercion and repression of legitimate agitation in the past. We have not come forward with this legislation with the object which actuated our predecessors in the legislations which they brought forward. It would be unfair to make the comparison which the hon. Member made. I would say that the comparison may be theoretically true, but if the difference between the two Governments, the difference between the ideals of the two Governments, and the difference between the situation then and now be taken into account, the comparison which the hon. Member made will not be applicable at this stage.

The hon. Member wanted the Bill to be more specific. I do not see, Sir, how it can be more specific. I have seen the amendments tabled by him. We considered the amendments which were tabled in the Lower House and we had ourselves considered almost all the suggestions when we framed this Bill. And it is because the powers are wide that we have limited the life of this Bill to two years. If the circumstances in the province change, if the difficulties that we envisage disappear, if the necessity for powers of this nature disappear, nobody would be more glad than this Government to come to the legislature to repeal this legislation even earlier than the prescribed period of two years. Sir, we do not want to be armed with such powers longer than it is necessary, because we are very conscious ourselves of the effects of unlimited power on the persons who exercise them, but we would be failing in our duty if we refuse to take powers only because of the fear that we will not be able to stand those powers. We would be failing in our duty if we do not take those powers, when we are convinced that it is necessary to take them and to exercise them promptly in the interest of peace and tranquillity of this Province and in the interest of democracy which has begun in this country. We know, Sir, what happened in Germany before Hitler came to power. We know what happened in Russia. We know what happened in all those countries. The Social Democrats hesitated to control, only because of theoretical notions of democracy, and what was the result? The result was the creation of Hitler and the destruction of all democracy. We also see the terrible results that followed by putting Hitler in power. It was all because no action was taken. It is necessary for a democracy, if it is to exist, to see that no forces which want to exploit ignorant people for purposes of seizure of power or for purposes of forcing their ideologies on the people, are allowed to utilise the liberties of democracy in a criminal manner. The only purpose of this Government is to control the criminal liberties of a few, so that the civil liberties of many will be safeguarded, and it is only with this consideration that the powers in this Bill will be utilised. I trust, Sir, that the hon. Member believes in our *bona fides* and in our capacity to see that the powers of this Bill are not misused as far as it is humanly possible to see.

The hon. Member made it very clear that he does not believe in a revolution. He believes in an evolution. We believe in both, but we do not believe in a violent revolution. We believe in a peaceful revolution. After all, a revolution only brings in a change. It is only a forcible change which is harmful, and therefore a violent revolution never achieves the purpose which it has in view. Evolution

[Mr. Morarji R. Desai]

has also got to be speeded up, so that impatient people may not be compelled to believe in a violent revolution.

We are, therefore, certainly conscious that this Bill is not going merely by itself to meet the forces of evil that may arise or that may be there in this Province. The hon. Member said that this Bill is primarily meant for the Communists. Government have never said so anywhere. The Bill is meant for all the people—whether they be Communists or not—who want to work in a violent manner; whether that violence is subtle or clear, or whether it is direct or indirect, it does not matter, as long as it is a violent method, this Bill will be able to control the activities of that class of people. But at the same time, Government is not going to rely on the repressive power of Government to entrench itself in power. This Government does not want to remain a day longer than it is able to keep or retain the confidence of the people in it. We do not want to maintain our power here by means of repressive measures. We expect to retain the confidence of the people by the constructive work that we do to ameliorate their condition, to bring our ideals into effect by constructive measures and not by repressive measures. But in order to carry out the constructive programme which the Government has in view, it is necessary to have peace by controlling the forces of evil which will make it impossible for Government to carry on its constructive activities.

Sir, it is only with this point of view that this Bill is brought before the House. I can assure the hon. Member that all due care and caution will be taken to see that the powers which will be vested in Government by this measure are used for the purposes which I have specified just now, and I would request him to consider this legislation from that point of view and to extend his support to its various provisions. In the interests of good government it is necessary that every responsible citizen should help Government in its legitimate task of maintaining peace and security in the Province and I have every confidence that I shall not be disappointed in the hope that the hon. Member will support the Government as he usually does.

Question put, and agreed to.

The Hon. the PRESIDENT: I think having regard to the hour at which we have begun today, it is time that we adjourn for tea and then take up the second reading. Otherwise, there will be an interruption afterwards.

[Recess from 2-10 p.m. to 2-40 p.m.]

Mr. MORARJI R. DESAI: Sir I beg to move that L. A. Bill No. XXV of 1947 (A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province of Bombay) be read a second time.

Question proposed.

Sir ABDUL LATIF HAJI HAJRAT KHAN: Sir, I am sorry that I was not present here when the House passed the first reading of the Bill. I thought that my hon. Friend Mr. Bakhale would go on with his speech for some time. I have learned just now with some surprise that the first reading of the Bill has been passed. I have a mandate from my Party to oppose this measure. I wanted

[Sir Abdul Latif Haji Hajrat Khan]
to protest against it. I think it is a wholly unnecessary measure. I hope you, Sir, will allow me to offer my remarks on the first reading just now.

The Hon. the PRESIDENT: No. Obviously, that cannot be done now. The hon. Member may, however, speak on the amendments. He will also have an opportunity of opposing the Bill, if he so desires, at the third reading stage, when he may show his protest.

Question put, and agreed to.

Clause 1 (*Short title, extent and duration*).

(1) This Act may be called the Bombay Public Security Measures Act, 1947.

(2) It extends to the whole of the Province of Bombay.

(3) It shall remain in force for a period of two years.

(4) The Provincial Government may by notification published in the *Official Gazette* direct that all or any of its provisions shall come into force in the whole of the Province of Bombay or in any area in the Province of Bombay on such date as may be specified in the notification and may by like notification direct that the same shall cease to be in force on such date as may be specified in the notification.

The Hon. the PRESIDENT: There is an amendment to this clause by the hon. Member Mr. Bakhale—amendment No. 2 His amendment No. 1 will come at the end. He may move his amendment No. 2.

Mr. R. R. BAKHALE: Sir, I beg to move—

In sub-clause (1) of clause 1, between the words "Security" and "Measures", the brackets and words "(Special and Emergency)" shall be inserted.

Question proposed.

Mr. R. R. BAKHALE: Sir, the sub-clause as amended will read as follows:

"This Act may be called the Bombay Public Security (Special and Emergency) Measures Act, 1947."

The object of moving this amendment is to give some indication to the public, a definite indication, that this Act is meant to be temporary and only for emergent purposes. In the course of my speech on the first reading of the Bill, I have made it clear that whether you take the 1908 Act, 1919 Act or even the 1932 Act, you will find that there is a definite wording conferring powes on Government only for a temporary period and to meet emergent situations, so that there should be no confusion on the part of the members of the public that such a measure is of a permanent character. What the Hon. Minister has been saying not only here, but in the lower House too, is sought to be incorporated in the amendment that I have just moved.

Mr. MORARJI R. DESAI: Sir, I do not think this amendment makes the meaning more clear or specific than it is at present. I cannot accept the amendment.

Amendment put, and negatived.

The Hon. the PRESIDENT: I shall now put the clause to the House.

Mr. R. N. MANDLIK: Sir, I want to oppose the clause.

The Hon. the PRESIDENT: If the hon. Member is opposing the clause and his point of view is accepted by the House the result will be that the Bill will be without any title. I can understand if the hon. Member wants to amend it, but the result of his opposition, supposing the House accepts it, would be that the Bill will be without any title, without the scope of extension or without any period. Therefore, I think his speech will be out of order.

Mr. R. N. MANDLIK: मी संबंध क्लोजला आतां विरोध करीत नाहीं. पहिल्या क्लॉजमधील तिसरा सब क्लॉज आहे त्याला विरोध करण्याचा माझा इरादा आहे. तो क्लॉज असा आहे:

"The Provincial Government may by notification published in the *Official Gazette* direct that all or any of its provisions shall come into force in the whole of the Province of Bombay or in any area in the Province of Bombay on such date as may be specified in the notification and may by like notification direct that the same shall cease to be in force on such date as may be specified in the notification.

The Hon. the PRESIDENT: Then the hon. Member may speak only on that part.

Mr. N. R. MANDLIK: हा जो भाग आहे तो योग्य नाहीं असें मला सांगावयाचें आहे. या बिलावर भाषण करतांना नामदार मंत्र्यांनीं सांगितलें कीं हें बिल आणण्यांत आमचा मुख्य हेतु फक्त व्हायोलन्सला आळा घालण्याचा आहे. देशांत जेथें अत्याचार चालू असतील तेथेंच ह्या बिलाचा उपयोग करण्याचा सरकारचा विचार आहे, जेथें अत्याचार चालू नाहींत त्या ठिकाणीं ह्या बिलाचा उपयोग करण्याचा सरकारचा विचार नाहीं असें नामदार मंत्र्यांनीं आपल्या भाषणांत सांगितलें. पण मी आतां या बिलाचा जो भाग वाचून दाखविला त्यांत आपल्याला असें आढळून येईल कीं अमूक एका विशिष्ट परिस्थितींत नोटिफिकेशन काढून या बिलाचा अंमल केला जाईल असें म्हटलेलें नाहीं. एवढेंच नव्हे तर असा स्पष्ट खुलासा कोठेंहि केलेला आढळून येत नाहीं. व म्हणून मी म्हणतों कीं या तिसऱ्या सब क्लॉजनें सरकार वाटेल त्या वेळीं या बिलाची अंमलबजावणी करण्याचा अधिकार आपल्या हातीं घेत आहे. विशिष्ट गंभीर परिस्थिति उत्पन्न झाली असतांनाच या बिलाचा उपयोग करण्यांत येईल असा स्पष्ट खुलासा सरकारनें केला असतां तर मी त्याला विरोध केला नसता. तसें न करतां उलट वाटेल त्या वेळीं हें बिल लागू करण्यांत येईल असा अधिकार सरकारला असूं नये व म्हणूनच मी हा विरोध करीत आहे.

[*Substance of the above in English.*]

I rise to oppose the third sub-clause of this main clause. The Hon. Minister has told us that he does not intend to enforce this provision unless there is distrubance or violence. But there is no such wording in this clause. By this clause Government have taken power to enforce these provisions at their discretion in any area. I wish that Government should make an amendment in this clause consistent with the statement of the Hon. Minister.

Sir ABDUL LATIF HAJI HAJRAT KHAN: Sir, if I have your permission I would like to move an amendment to clause 1.

The Hon. the PRESIDENT: What is it that the hon. Member asks my permission for?

Sir ABDUL LATIF HAJI HAJRAT KHAN : I want to move an amendment to sub-clause (3) of clause 1.

The Hon. the PRESIDENT : I do not think that it is usual to accede to such requests at this stage. If the hon. Member wanted to move any amendments, he should have taken care to table his amendment in time. In fact, all the amendments that were received to clause 1 have already been moved and disposed of, and the clause as a whole is now before the House for consideration. I should have thought that the hon. Member was more alert and would have tabled his amendment in time. However, in this particular case, I would allow him to move his amendment to clause 1.

Sir ABDUL LATIF HAJI HAJRAT KHAN : Sir, I beg to move :

In clause 1, sub-clause (3), substitute the word " one " for the word " two ".

Question proposed.

Sir ABDUL LATIF HAJI HAJRAT KHAN : I think the period of the Bill should be reduced to one year.

Mr. MORARJI R. DESAI : I am unable to accept the amendment, Sir.

Amendment put, and negatived.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Power to make orders detaining or restraining movements on actions of persons) :—

(1) The Provincial Government may, if it is satisfied that any person is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof, make an order—

(*a*) directing that he be detained;

(*b*) directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in the Province as may be specified in the order;

(*c*) requiring him to reside or remain in such place or within such area in the Province as may be specified in the order and, if he is not already there, to proceed to that place or area within such time as may be specified in the order;

(*d*) requiring him to notify his movements, or to report himself or to do both in such manner at such times and to such authority or person, as may be specified in the order;

(*e*) imposing upon him such restrictions as may be specified in the order, in respect of his employment or business or association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinion;

(*f*) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order.

(2) An order made under sub-section (*1*) may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due observance of the restrictions or conditions specified in the order.

(3) If any person is found in any area or place in contravention of an order made under the provisions of this section, or fails to leave any area or place in accordance with the requirements of such order, he may, without prejudice to the provisions of sub-section (6), be removed by any police officer from such area or place.

(4) So long as there is in force in respect of any person an order under clause (*a*) of sub-section (1) he shall be liable to be removed to, and detained in, such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the Provincial Government may from time to time by general or special order specify.

(5) If the Commissioner of Police, Bombay, or the District Magistrate, or the Additional District Magistrate has reason to believe that a person in respect of whom an order has been made under clause (*a*) of sub-section (1) has absconded or is concealing himself or is otherwise delaying or frustrating the execution of the order, he may—

(*a*) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class, as the case may be, having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure, 1898, hereinafter referred to as the Code, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate, or

(*b*) by a direction notified in the *Official Gazette*, require the said person to appear before him at such place, and within such period, as may be specified in the direction; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply with it and that he had within the period specified in it, informed the Commissioner of Police, or the District Magistrate, or the Additional District Magistrate as the case may be of his whereabouts and of the reasons which rendered compliance with it impossible, be punishable on conviction, with imprisonment for a term which may extend to one year, or with fine, or with both.

(6) If any person contravenes any order made under this section he shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such person has entered into a bond in pursuance of the provisions of sub-section (2), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the Court why such penalty should not be paid.

The Hon. the PRESIDENT: To this clause, there are amendments. The hon. Member Mr. Bakhale may move his amendment No. 3.

Mr. R. R. BAKHALE: Sir, I beg to move:

In sub-clause (1) of clause 2, between the article "a" and the word "manner", the words violent, subversive or other than constitutional" shall be inserted.

Question proposed.

Mr. R. R. BAKHALE: Sir, sub-clause (1) of clause 2, as amended, will read follows:—

"The Provincial Government may, if it is satisfied that any person is acting in a violent, subversive or other than constitutional manner prejudicial to the public safety, maintenance of public order....." etc. etc.

The point is, and that point has been emphasised very sharply during the speech of the Hon. the Home Minister, that whatever phraseology might have been employed in the body of this Bill, Government have definitely in view only such agitations, actions or movements which are conducted by violent means or which result in violence and which are a menace to public peace and tranquillity and so on and so forth. I have already said that I am in entire agreement with him so far as this point is concerned, and it is with the idea of specifying what his object is that this amendment is moved. If any movement, agitation or action is violent, action can be taken under the provisions of this Bill. If it is subversive and the courts are competent enough to interpret the expression 'subversive' in a proper manner, the Bill covers such cases. I have endeavoured to give in a subsequent clause a definition of what "unconstitutional means" mean. Therefore, this amendment seeks to carry out, in my opinion, in a better way both the spirit and the letter of what the Hon. the Home Minister has said than the phraseology that finds place in this Bill. I hope that Government will be pleased to consider sympathetically this amendment. I realise that it is too late, but what we have been telling the British Government hitherto is "Let not the words 'too late' be written on the portals of Government." May I make the same appeal to the present Government to put the thing right before it is too late?

Mr. SONUSING D. PATIL: Sir, I rise to oppose the amendment. I think that, by the insertion of the words "violent, subversive and other than constitutional, my hon. Friend Mr. Bakhale wants to narrow down the scope of the provisions contained in the clause. In my opinion, it would be mere tautology to have such words added to the clause. I do not think that any such error of tautology should be allowed to creep into the Bill. I, therefore, oppose the amendment.

Sir HAJI ABDUL LATIF HAJI HAJRAT KHAN: If I have your permission, I should like to move an amendment to clause 2.

The Hon. the PRESIDENT: We shall take it up after all the other amendments to the clause are disposed of.

Mr. MORARJI R. DESAI: Sir, the acceptance of this amendment will mean that every order passed under this section will be liable to all sorts of interference by courts, and that will render the measure absolutely ineffective. That is why it is not possible to accept the amendment.

Amendment put, and negatived.

The Hon. the PRESIDENT: The next amendment, No. 4 is merely for the deletion of certain words from the clause. Will it not do if the hon. Member, instead of actually moving it, spoke on it when he speaks on his remaining amendments to the clause?

Mr. MORARJI R. DESAI: I think, Sir, that this amendment too has to be moved by the hon Member, though it is merely for the omission of certain words in the clause.

The Hon. the PRESIDENT: Let the hon. Member Mr. Bakhale move his amendment No. 4.

Mr. R. R. BAKHALE: Sir, I beg to move:

In paragraph (*d*) of sub-cluse (1) of clause 2, the words "or to report himself or to do both" shall be omitted.

Question proposed.

Mr. R. R. BAKHALE: Sir, this is an amendment with regard to what is known popularly as parole. A person detained in custody has to report himself to the police. That is a provision in the Bill. My amendment seeks to delete this provision so that this parole business may no longer disfigure our statute book. This morning I told the House that this provision existed in the 1919 Act, but that Act is no longer on the statute book. We had a similar provision in the 1932 Act of Bombay and we opposed that provision tooth and nail. We then said that the punishment of asking a person to report himself to the police, not only once but more than twice a day, at a distance of several miles, was the most cruel, inhuman, degrading and insulting punishment. When a large number of our countrymen were being thrown into jails on account of the civil disobedience movement, such of us as had the privilege of sitting in the legislature then strongly opposed a provision like this, and when we were discussing this Bill on the floor of the House in 1932 I came across some very pertinent remarks from one of the hon. Members of that Council. I shall read out what the hon. Member said. He made the remarks in reply to the speech of the Advocate General who supported the Government. This is what he said—

"Sir, the Hon. member the Advocate General did not think that there was any loss of respect in reporting oneself to the police three times a day. I wonder whether, if he had the order to go three times a day to a policeman and say "Salam Sab, I have behaved myself", he would appreciate it. Sir, youthful politician that he is, he asks us to trust the officers of the Government. I wonder if he knows what our experience of officials in this very House is."

Sir, the same hon. Member further said—

"The section as it stands says that a man 'shall conduct himself in such manner', and it is this section which will be used in asking a man to report himself to the Police once, twice, thrice a day. When we ask the hon. Members of the opposite side to report themselves to the tellers, they grouse and the hon. Member, Sir Shah Nawaz Bhutto, said that he was fed up with this business. How much more fed up the man would be who has to report to the Police several times a day?"

The hon. Member who expressed these views about such a provision at that time is no less than the hon. gentleman who now occupies a seat on the Treasury

[Mr. R. R. Bakhale].

Benches. That gentleman was the Hon. Dr. M. D. D. Gilder. May I know whether the hon. Member would support such a provision now ? I am sure, in view of his remarks quoted above, the hon. Member would not be a party to such an insulting and humiliating provision.

With these words, I hope Government will accept my amendment.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri) : अध्यक्ष महाराज, मला स्वत:ला या कलमांतील हजेरीच्या अटीचा कटु अनुभव आला असल्यामुळें माझा त्याला तीव्र विरोध आहे. १९३२ सालीं सत्याग्रहाच्या चळवळीच्या वेळीं माझ्यावर ही हजेरीची अट घातली होती. त्यावेळीं तो मोडून मी तुरुंगांत गेलों. तेथून सुटल्यावर पुन: तीच अट माझ्यावर घालण्याचा डि. मॅ. मि. अमीनुद्दीन यांचा इरादा मला समजला. तेव्हां मी त्यांना भेटलों व सांगितलें कीं,— " मला सरकारची पुन्हां तुरुंगांत पाठविण्याची इच्छा आहे किंवा काय समजत नाहीं. पण कांहीं झालें तरी मी आतां हि तुमची हजेरी देण्याची आर्डर मानणार नाहीं. " तेव्हां मला स्पष्टच सांगितलें कीं, " तुम्हीं बाहेर रहावें अशी आमची खरोखर इच्छा नाहीं ! " पुढें त्यांनीं माझ्यावर तशी ऑर्डर बजावली नाहीं ही गोष्ट निराळी ! पण ही जी पूर्वीची स्थिति होती तींच आज या बिलानें नामदार मंत्र्यांनीं उत्पन्न केली आहे. त्यावेळीं मी कुलाबा कॉंग्रेस कमिटीचा अध्यक्ष होतो व डि. मॅ. ची हजेरीची ऑर्डर मोडली म्हणून मी देशभक्त झालो होतों. पण आज मोरारजीभाई जो हा नवा कायदा करीत आहेत तो १९३२ सालाप्रमाणें जर मी मोडला तर मात्र मी देशभक्त न होता क्रिमिनल ठरणार आहे ! ह्या कायद्याची अंमलबजावणी करण्याचें काम खुद्द मंत्र्याच्या हातांत असतें तर मी त्याला कदाचित् मान्यता दिली असतां पण तशी वस्तुस्थिती नाहीं. अप्रत्यक्षपणें या कायद्याखालचें अधिकार १०-१५ रुपये मिळविणाऱ्या पोलिसांच्या हातांत दिलेले आहेत. पोलिसांकडून रिपोर्ट येतात ते कलेक्टर मानतात व त्याप्रमाणें हुकूम सोडले जातात. ह्या गोष्टी मी स्वत:च्या अनुभवावरून सांगत आहे. अशा गोष्टी पुन: होऊं नयेत म्हणून मी मंत्र्यांना अशी विनंती करतो कीं, या कलमांत जी हजेरीची अट घातलेली आहे ती काढून टाकण्यांत यावी.

[*Substance of the above in English.*]

I had a bitter experience of the condition of reporting myself to the police in 1932. Because I did not report myself to the police in those days I was considered to be patriotic, but if I follow the same attitude now I will be considered to be a criminal. I would not have objected to this provision if the Hon. Minister was to enforce that provision personally, so that he could not have mishandled it. But according to this clause those powers are vested in the ordinary police constable, earning Rs. 10 or Rs. 15 per month, whose reports are accepted blindly by the District Magistrate. I, therefore, request that the condition of reporting to the police should be deleted.

Mr. MORARJI R. DESAI : Sir, when the hon. Member who was quoted spoke in 1932 he was speaking about such powers vesting in a foreign Government. That makes a great difference. If a popular Government exercises these powers in

[Mr. Morarji R. Desai].

a wrong manner it will cease to hold the power because the people are not going to keep them in power. I can only say that this power will be utilised very rarely. When we want to utilise this power it will not be utilised wantonly or on the advice of a constable. Government is bound to exercise its discretion in such cases and will see that the power is not misused. I can only say that the power is necessary and that it will be utilised very rarely. I, therefore, oppose the amendment.

Mr. R. N. MANDLIK : Assurances have been useless in the past !

Amendment put, and negatived.

The Hon. the PRESIDENT : I have received another set of amendments from the hon. Member Sir Abdul Latif Haji Hajrat Khan. They may also be taken up at the appropriate time. The hon. Member may, therefore, move the first amendment to the clause which is under discussion.

Sir ABDUL LATIF HAJI HAJRAT KHAN : Sir, I beg to move—

In clause 2, sub-clause (1), delete " satisfied " and substitute the following after " is " :—

" proved by independent evidence and after disclosing all relevant facts and other particulars which will enable the person concerned to defend himself and to show why an order should not be made ".

Question proposed.

Sir ABDUL LATIF HAJI HAJRAT KHAN : Sir, the Hon. Minister has closely followed the discussions in the Lower House and I do not want to say anything in support of this amendment, but I hope he will see his way to accept it.

Mr. MORARJI R. DESAI : This amendment destroys the very purpose of the clause and makes the clause futile. I oppose the amendment.

Amendment put, and negatived.

The Hon. the PRESIDENT : The hon. Member Mr. Bakhale may move the next amendment.

Mr. MORARJI R. DESAI : Amendment No. 5 does not survive now.

Mr. R. R. BAKHALE : I am not moving it, but I move amendment No. 6 as follows :—

At the end of sub-clause (1) of clause 2, the following new clause shall be added :—

" (2) An order made under sub-section (1) shall not, unless the Provincial Government by special order or otherwise directs, remain in force for more than one month from the making thereof :

Provided that no person detained under clause (*a*) of sub-section (*1*) shall be so detained for a period exceeding two months. "

Question proposed.

Mr. R. R. BAKHALE : Sir, the object in moving this amendment is this : I assume that the wording of this Bill is so wide, so comprehensive and so vague that in spite of all the precautions that human ingenuity can possibly take it is not improbable that a wrong person may be detained or arrested and put in jail or some other action taken against him. There is no provision at all in the Bill either to review the cases or the orders issued under any of the relative provisions.

[Mr. R. R. Bakhale]

The principle which has hitherto been followed in all legislations of this type is that the man who is put in custody without trial before a judicial authority must be set free after a certain specific period—it may be a fortnight, a month, three months, six months, a year, or any specified period—but he cannot be kept in custody continuously and for a long time. It is to cover these cases particularly that I have moved this amendment so that Government may get an opportunity to release a person from custody either if they think that that person has become safe or if it later comes to their knowledge that the man was wrongfully kept in custody. This has hitherto been followed and I want to emphasise it. If you take either the 1908 or the 1919 legislation, as I pointed out a short while ago, although this is an executive action taken to meet certain emergent circumstances there was some element of judiciary attached in some manner to such executive action. Under the 1908 Act Government used to appoint a judicial officer competent to be appointed as a High Court Judge to examine the cases of suspected persons and on hearing the reports from such competent officer Government used to take action. There was some element of judiciary attached to the whole proceeding before the executive took action. The 1919 Act goes a step further. It has first an investigating authority which investigates suspected cases, hears the suspected person, and on the report of this authority Government take action in their executive capacity. I have not challenged that position at all, but after the action is taken the whole record is to be in the hands of three judicial officers, two of whom will be of the status of District and Sessions Judge and one a non-official. These three officers will examine the cases and, if there is any miscarriage of justice, they can make a report to Government and the detenu is discharged. The House will thus see that all previous legislations, barring the 1932 Act, contained some element of judiciary attached even to executive action taken in normal times. I have not gone to the extent to which the former pieces of legislation have gone. I have only stated that if Government want to take action under the provisions of this Bill let them by all means do it; I support them; but I want to restrain them to some extent, to a limited period. You can extend that period in certain circumstances. That power is there in the amendment I have given notice of, and you should also examine the cases of people who cannot be trusted, so that, if there is any miscarriage of orders anywhere, it can be rectified immediately. My point is that wrong things, or even good things done in a wrong manner, create such a great discontent among the illiterate people that it is on the whole wise on the part of the Government to take adequate safeguards and to make proper provisions in such matters. It is, therefore, in the interest of Government that I venture to make this amendment.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri-): अध्यक्ष महाराज, या कलमामध्यें कोणतेंहि कारण न सांगतां ऐकाद्या मनुष्याला व्हायोलन्सच्या नांवाखालीं तुरुंगांत अडकवून ठेवण्याचा अधिकार सरकारला देण्यांत आला आहे. त्या इसमाला किती दिवस तुरुंगांत ठेवावयाचा तें सरकारच्या मर्जीवर अवलंबून राहणार आहे. अशा रीतीने एखाद्या नागरिकाचें स्वातंत्र्य केवळ सरकारच्या मर्जीवर राखून ठेवणें ही गोष्ट लोकशाहि सरकारला शोभणारी नाहीं असें मला वाटते. "एकाद्याला तुरुंगांत ठेवावयाचेंच असेल तर फार तर दोन महिने ठेवावें" अशी सन्माननीय सभासद श्री. बखले यांनीं जी उपसूचना आणली आहे तिला माझा पाठिंबा आहे. सरकारनें ती मान्य करावी अशी मी विनंति करतो. या उपसूचनेचें काय भवितव्य आहे ते ठरलेलेंच आहे. मंत्र्यांच्या हातांत सत्ता आहे. त्यामुळें चार

[Mr. R. N. Mandlik]

उपदेशाच्या गोष्टी सांगण्याच्या पलीकडे आमच्या सारख्यांच्या हातून ज्यास्त कांहीं होणार नाहीं याबद्दल मला पक्की खात्री आहे. परंतु माझें कर्तव्य म्हणून मी त्या सांगत आहे. "कॉंग्रेस सरकार कांहीं चुकीचें करणार नाहीं, कॉंग्रेस जें बरोबर आहे तेंच करील" अशी लोकांची जी समजूत करून देण्यांत आलेली आहे ती बरोबर नाहीं. पुष्कळ लोकांचा कॉंग्रेसवर विश्वास आहे याची मला जाणीव आहे. पण माझा मात्र तिचेवर मुळींच विश्वास नाहीं.

नुकताच जो गुंड कायदा पास झाला आहे त्याअन्वयें आजहि अनेक लोकांना तुरुंगांत टाकण्यांत आलें आहे. या कायद्याप्रमाणें गुन्हेगाराला मॅजिस्ट्रेटपुढें उभा करण्याची जरूर नाहीं किंवा खटला करण्याचीही जरूरी नाहीं. पोलिसांनीं रिपोर्ट केला कीं कोणलाहि तुरुंगांत उचलून टाकलें जातें आणि पुढें त्याची दखल कोणाच कडून घेतली जात नाहीं असा अनुभव आलेला आहे. या सगळ्या कायद्यांची अंमलबजावणी पोलिसांकडूनच व्हावयाची आहे तें योग्य नाहीं. म्हणून मला सरकारला अशी विनंति करावयाची आहे कीं असले अधिकार तुम्ही पोलिसांना देऊं नका. हें कलम जर आहे तसेच ठेवण्यांत आलें तर गुंड कायद्याप्रमाणेंच अनेक लोक बेमुदत तुरुंगांत ठेवले जातील. तेव्हां कोणाला तुरुंगांत ठेवावयाचेंच झालें तर निदान दोन महिन्यांच्या पलीकडेठेऊं नये अशी जी उपसूचना आहे तिचा सरकारनें स्वीकार करावा अशी मी विनंति करतो.

[*Substance of the above in English.*]

Sir, I support the amendment of the hon. Member Mr. Bakhale laying down that the period of internment should not exceed two months. By this clause, Government is taking powers to intern without disclosing the reasons therefor. This is an undemocratic principle. There is an impression in the minds of the public that whatever the Congress Government does is always in the interests of the general public. This is a wrong impression. At least, I am not prepared to believe the Congress Government to this extent. If this clause is retained as it is, many persons are likely to suffer without any fault on their part. Under the Goonda Act many persons have actually been interned for an indefinite period without any reason. I, therefore, support Mr. Bakhale's amendment.

Mr. MORARJI R. DESAI: The hon. Member who spoke just now has not brought a single case to my notice where somebody has been detained for a long time.

Mr. R. N. MANDLIK: A report has been sent to you by the Hindu Sabha.

Mr. MORARJI R. DESAI: The hon. Member does not even know as to how many people have been dealt with in the Kolaba district.

Mr. R. N. MANDLIK: I am not speaking of Kolaba district.

Mr. MORARJI R. DESAI: Even as regards Bombay, his information is not based on facts.

Government is very anxious to see that the number is constantly brought down and nobody is kept in jail for a longer period than is absolutely necessary. Many people were arrested; there is no doubt about it, but that happens when a disturbance takes place on a large scale. Does the hon. Member think that Government should sit quiet and watch what is taking place?

[Mr. Morarji R. Desai]

The hon. Member has suggested a period of two months. I am not prepared to accept any such limit. The limitation should be two years. Nobody can be kept in jail for more than two years. Even if somebody is arrested when this Bill is passed, he will not be detained for more than two years. Moreover, Government will give notice, providing for renewals and fixing the period from time to time. Similarly, there is a provision to revise the orders passed under clause 3; a revision is allowed under clause 3 and Government will consider it, and apart from that, Government has power, at any time, to reconsider the matter.

I, therefore, oppose the amendment.

Amendment put, and negatived.

Mr. R. R. BAKHALE: Sir, I beg to move—

In sub-clause (4) of clause 2, between the word "maintenance" and the comma following immediately after it, the words "of himself and his family, if he has any," shall be inserted.

Question proposed.

Mr. R. R. BAKHALE: Sir, this sub-clause deals with the conditions under which a person has to be detained, and one of the conditions is with regard to maintenance. In the amendment that I have moved, I have suggested that the maintenance to be given by Government should be not only in respect of himself but also in respect of his family, if he has any. It has come to the knowledge of the public during the last Civil Disobedience movement that a large number of families of those who went to jail during that movement suffered economic privations to a very large extent. Representations to Government did not help matters very much, and there was economic distress among the families of those who were put in custody. It is desirable, in human interests, that if a man is put in jail for any offence committed under this Bill, provision should be made for the maintenance of himself and his family.

Mr. R. N. MANDLIK: मी या उपसूचनेला पाठिंबा देत आहे. १९४२ च्या चळवळीमध्यें पुष्कळ काँग्रेसचे लोक तुरुंगांत होते आणि त्या वेळीं अशा तक्रारी करण्यांत आल्या होत्या कीं आम्हांला सरकारनें बिनचौकशी तुरुंगांत टाकलें आहे व आमच्या मागें घरीं आमच्या कुटुंबांतील मंडळींचे हाल होत आहेत. अशा परिस्थितींत सरकारनें एक तर आमची तुरुंगांतून सुटका करावी किंवा आमच्या कुटुंबाला मेंटेनन्स अलाउन्स तरी द्यावा. अशा प्रकारच्या तक्रारी या काँग्रेसच्या लोकांनीं ९३ कलमी सरकारकडे केल्या होत्या. अशा कांहीं तक्रारी मी स्वत: पाठविल्या होत्या व कांहीं बाबतींत माझ्या तक्रारींना मान देऊन त्या कुटुंबांना त्या सरकारनें मेंटेनन्स दिलेहि होतें. जी गोष्ट ९३ कलमी सरकारनें केली ती गोष्ट लोकशाहि तत्वाचा पुरस्कार करणाऱ्या सरकारनें करूं नये ही चीड आणणारी गोष्ट आहे असें मला वाटतें. तेव्हां या उपसूचनेला मान देऊन तुरुंगांत पाठविलेल्या इसमाच्या कुटुंबाला कांहीं तरी मेंटेनन्स देण्याची व्यवस्था करावी अशी मी मंत्र्यांना विनंति करतों.

[*Substance of the above in English.*]

Sir, it is very necessary to provide for a maintenance allowance to the family of a man who has been jailed or interned by Government. It is a pity that the

[Mr. R. N. Mandlik]

popular Government does not do this, although such an allowance was granted even under the Section 93 regime.

Mr. MORARJI R. DESAI: Sir, provision has been made in the Bill to make Rules for all these purposes, and when the Rules are to be framed, due consideration will be given to the suggestions of the hon. Member. I am not prepared to accept the amendment.

Amendment put, and negatived.

The Hon. the PRESIDENT: There are now no more amendments to this clause, and I shall now put the clause to the House.

Mr. R. N. MANDLIK: Sir, I have to oppose the whole clause.

अध्यक्ष महाराज, या क्लॉजला ९ उपसूचना येऊन त्यांवर अगोदर चर्चा झालेली आहे, पण त्या व्यतिरिक्त आणखी एक दोन गोष्टी सरकारच्या नजरेला आणण्याची माझी इच्छा आहे व म्हणून मी या क्लॉजला विरोध करण्यासाठीं उभा राहिलो आहे. या क्लॉजच्या सुरवातीला असें म्हटलें आहे कीं

"The Provincial Government may, if it is satisfied that any person is acting in a manner prejudicial to the public safety, the maintenance of public order, or the tranquillity of the Province or any part thereof, etc., etc."

त्यांत जो शब्द प्रयोग केलेला आहे तो अगदीं जुन्या नोकरशाहीच्या ठशांतून या सरकारने उचललेला दिसतो व तें बरोबर नाहीं म्हणून त्याला विरोध करण्यासाठीं मी उभा आहे. ज्या इसमाला तुरुंगांत टाकण्यांत येईल त्याला कोणता क्लास दिला जाईल या बद्दल या बिलांत उल्लेख केलेला दिसत नाहीं. आतां नुकताच जो गुंड कायदा पास झाला त्या अन्वये ज्या लोकांना तुरुंगांत टाकण्यांत आलें आहे त्यांना कोणताहि क्लास दिला नाहीं. या बाबतींत गोदावरीबाई परुळेकर यांचें उदाहरण लक्षांत ठेवण्याजोगें आहे. या बाईना कोर्टानें हुकूम दिल्यानंतर ठाण्याच्या तुरुंगांत ठेवण्यांत आलें. त्यांना सी क्लास दिला होता अशी माझी माहिती आहे. वास्तविक तुरुंगांत क्लास देण्याबाबत जे नियम आहेत त्यांप्रमाणें मिसेस गोदावरीबाईना बी क्लास देणें इष्ट होतें, पण तसें करण्यांत आलें नाहीं असें मला सांगावयाचें आहे.

The Hon. the PRESIDENT: She was in 'B' class. First she was in 'C' class) but afterwards she was given 'B' class. I know this for certain.

Mr. R. N. MANDLIK: म्हणजे पहिल्यांदा 'बी, क्लास दिला नव्हता ही कबुली दिल्यासारखीच आहे. इतर बाबतींत तुरुंगांत क्लास देण्याची जी व्यवस्था आहे तशीच या कायद्यांतहि असावी अशी माझी सूचना आहे. कांहीं दिवस 'सी, क्लास आणि कांहीं दिवस 'बी, क्लास अशी परिस्थिति असतां कामा नये.

नंतर या क्लाजच्या कलम १ (ई) मध्यें असें म्हटलें आहे कीं.

"(e) imposing upon him such restrictions as may be specified in the order, in respect of his employment or business or association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinion;"

[Mr. R. N. Mandlik]

सरकारच्या मनांत एकाद्याला जर अडकवून टाकावयाचें असेल तर वर नमुद केलेल्यापैकीं कोणतेंहि कारण पुरेसें आहे. इतक्या अनेकविध गोष्टी या क्लॉजमध्यें सांगितल्या आहेत. म्हणजे एकमेकांशीं बोलण्या चालण्यालाहि प्रतिबंध या क्लॉजमुळें केला जाणार आहे. त्याचप्रमाणें डिस्सेमिनेशन ऑफ् न्युज आणि प्रॉपागेशन ऑफ् ओपिनियन वगैरे गोष्टीना सरकारचा विरोध कां असावा तें समजत नाहीं. प्रत्येकाला आपल्या बुद्धीप्रमाणें मत मांडण्याचा अधिकार आहे. असें करण्यांत व्हायोलन्स होत असेल तर गोष्ट वेगळीं, पण नुसती मोघम भाषा वापरण्याला मोकळीक प्रत्येकाला असली पाहिजे. हे जे प्रतिबंध या क्लॉजमध्यें घातले आहेत ते बरोबर नाहींत असें मला सरकारला निक्षून सांगावयाचें आहे. आजचाच टाइम्स आपण वाचला तर आपल्याला असें आढळून येईल कीं पंजाब सरकारनेंहि मुंबई सरकारच्या पावलावर पाऊल टाकून एक नवीन वटहुकूम काढला आहे. त्या हुकुमांत असें म्हटलें आहे कीं, अमूक अमूक बातमी वर्तमानपत्रांत छापली जाऊं नये. टाइम्स हें वर्तमानपत्र सामान्यतः सरकारच्या बाजूचें असतें, पण त्यानें सुद्धां या वेळीं सरकारच्या वर्तनाला विरोध केला आहे. तेव्हां या सगळ्या गोष्टी ध्यानांत घेऊन असले अरेरावी अधिकार सरकारनें आपल्या हातांत घेऊं नये असें मला सांगावयाचें आहे.

शिक्षेसंबंधानें या बिलामध्यें नुसते इंप्रिझनमेंट असे शब्द वापरले आहेत. याचा अर्थ असा कीं ती कैद साधी असेल किंवा सक्तमजुरीचीहि असेल. माझें म्हणणें असें कीं सरकारला नको असलेल्या गोष्टी करणारांना जर नुसतें अडकावूनच ठेवावयाचें असेल तर त्यांना साधी कैद देण्याची व्यवस्था सरकारनें कां करूं नये? साध्या कैदेनें समाधान होत नसेल तर सक्तमजुरीची कैद देतां येण्यासारखी आहे. पण या बिलांत तरतूद केल्याप्रमाणें खुनशीपणाची वृत्ति सरकारनें दाखवूं नये. म्हणून योग्य ती सुधारणा या बिलांत करण्यांत यावी अशी माझी सरकारला विनंती आहे.

[*Substance of the above in English.*]

Sir, I want to oppose this clause. Government must adopt a reasonable attitude in the matter of allotting classes to the prisoners. Mrs. Godavaribai Parulekar was first given 'C' class and afterwards it was changed to 'B'.

According to clause 1 (*e*) Government has power to intern or arrest anybody whose activities are considered objectionable. In these days of democracy everybody must have the liberty to propagate his views.

As regards punishment, the word "imprisonment" is vague. This provision empowers Government to order rigorous imprisonment even in the first instance. My suggestion is that if Government wants to intern a person he should first be given ordinary imprisonment, and then if Government is not satisfied with this punishment, they may resort to rigorous imprisonment.

Mr. V. S. DONGRE *rose.*

The Hon. the PRESIDENT: Does the hon. Member want to speak on this clause?

Mr. V. S. DONGRE: Yes, Sir. I shall not take more than half a minute. The arguments of my hon. Friend are not at all convincing. From the Thana district some people were externed. They had created a lot of trouble in the district. They came back to the border, and in spite of the orders of the Government, they created and still continue to create a lot of mischief. Therefore, I think this clause is absolutely necessary, and it should be kept in order that there may be peace and tranquillity in the Province.

Clause 2 ordered to stand part of the Bill.

Clause 3 (*Grounds of order to be disclosed to person affected*).—

Where an order is made in respect of any person under clause (*a*) of sub-section (*1*) of section 2, the Provincial Government shall, as soon as may be, communicate to the person affected by the order the grounds on which the order has been made, without disclosing facts which it considers against the public interest to disclose, and such other particulars as are in its opinion sufficient to enable him to make a representation to the Provincial Government against the order and inform him of his right to make such representation and afford him the earliest opportunity of doing so.

The Hon. the PRESIDENT: There is no amendment tabled to this clause. But those hon. Members who wish to speak on the clause may do so. I am told that the hon. Member Sir Abdul Latif Haji Hajrat Khan wishes to oppose it.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri): अध्यक्ष महाराज, मला या कलमाला विरोध करावयाचा आहे. या कलमाप्रमाणें ज्या इसमाला तुरुंगांत टाकावयाचें असेल किंवा टाकण्यांत आलें असेल त्या इसमाला रिप्रेझेंटेशन करण्याचा अधिकार या कलमांत दिलेला दिसतो. पण पुढें असा एक क्लाज आहे कीं "and the ground on which the order has been made without disclosing facts which it considers against the public interest to disclose" याचा अर्थ असा कीं त्या इसमाला सरकारकडे दाद मागण्यासाठीं जो अर्ज करावयाचा त्याला जरूर अशी माहिती म्हणजे त्याला तुरुंगांत टाकण्याचीं कारणें हें गांधीयन सरकार पुरवायला तयार नाहीं. यामुळें त्या इसमाला रिप्रेझेंटेशन करण्यापासून जो एकप्रकारचा फायदा मिळावयाचा तो मिळणार नाहीं. तेव्हां या बाबतींत माझी अशी सूचना आहे कीं तुरुंगांत टाकलें असेल त्याच्या विरुद्ध जे कांहीं म्हणावयाचें असेल तें सरकारनें स्पष्टपणें त्याला कळवावें. ज्या कारणासाठीं त्याला तुरुंगांत टाकला असेल त्याचीं स्पष्ट कारणें सरकारनें त्याला कळवावींत म्हणजे स्वत:चे म्हणणें सरकारपुढें मांडण्याची परवानगी या क्लाजमध्यें दिली आहे तिचा त्या इसमाला पूर्णपणें फायदा घेतां येईल.

[*Substance of the above in English.*]

Sir, I oppose this clause. This clause gives the person interned or to be interned the right to represent his case to Government, but at the same time Government is not prepared to give him the reasons of his internment or supply him with any other information to prove his case. So, the necessary amendment must be made in this clause.

Clause 3 ordered to stand part of the Bill.

The Hon. the PRESIDENT: There is an amendment moved by the hon. Member Mr. Bakhale to clause 4.

Mr. R. R. BAKHALE : That is not to clause 4, Sir, but it comes after clause 4.

The Hon. the PRESIDENT : Unless any hon. Member wants to speak on clause 4, I will put it to the House.

Clause 4 ordered to stand part of the Bill.

Mr. R. R. BAKHALE : Sir, I beg to move :

After clause 4, the following new clause shall be added :

"5. The Provincial Government shall, subject to the provisions of section 21 of the Bombay General Clauses Act, 1904, so far as conveniently may be, take into consideration and review any orders in force made or deemed to have been made under sub-section (*1*) of section 2 ; and when, in the opinion of the Provincial Government, it is compatible with public safety or peace to cancel or modify any such orders, the Provincial Government shall cancel or modify any such orders accordingly."

Question proposed.

Mr. R. R. BAKHALE : Sir, some discussion has already taken place on this matter. The view that the Hon. the Home Minister has taken is that Government goes on examining and reviewing cases from time to time, and therefore, the public should rest assured that if there is any miscarriage of justice it will be removed as a result of the examination and review by Government. Personally, I am prepared to accept the assurance that he has given, but I would like to put him this question : assuming that there was some other Government in power and the Hon. the Home Minister was on these (Opposition) Benches here, if an assurance of this type was given by the Government to the Opposition and to the non-official side—by a Government, let us assume, wholly national both in spirit and in letter, a popular Government with a strong majority behind it—would he himself be pleased with an assurance of this nature ? Even though personally the assurance is acceptable to me, it is with an idea of removing this difficulty that hon. Members have in view that I have moved this amendment. The whole of the amendment is copied from the 1932 Act, deleting only the latter portion of it.

Mr. MORARJI R. DESAI : I would point out, Sir, that this clause does not in any way bring about the situation which the hon. Member apprehends. Even under the provisions as they are, Government has no discretion in the matter. So, why add a clause giving discretion to the Government ?

The hon. Member asked me a question whether I would be satisfied if a similar assurance was given to me if I was on the Opposition benches. I always believe in the non-violent action as the most effective action against a Government and, therefore, I would not press for any such assurance, and that is why I should not be afraid of any such provision which, I know, in the hands of a popular Government, would not be misused. Even if it was, I should not be dissatisfied.

Sir, I oppose the amendment.

Amendment, put and negatived.

Clause 5 (*Control of Essential Services*) :

(1) If the Provincial Government is of opinion that any employment under the Provincial Government or any other employment or class of employment connected with any matter specified in List II or List III in the Seventh Schedule to the Government of India Act, 1935, is essential for purposes of public safety, the maintenance of public order or maintaining supplies or services essential to the life of the community, it may notify such employment or class of employments in the *Official Gazette* accordingly and may direct, by general or special order, that any person or persons engaged in

such employment or class of employments shall not depart out of such area or areas as may be specified in such order.

(2) An order made under sub-section (*1*) shall be published in such manner as the Provincial Government considers best calculated to bring it to the notice of the persons affected by the order.

(3) Where any employment or class of employments has been notified under sub-section (*1*),

(*i*) every person engaged in such employment,

(*a*) who disobeys any lawful order given to him in the course of such employment, or

(*b*) who without justifiable excuse abandons such employment or absents himself from work, or

(*c*) who departs from any area specified in an order under sub-section (*1*) without the permission of the Provincial Government, and

(*ii*) every employer in such employment who, without justifiable excuse—

(*a*) discontinues the employment of any person engaged in such employment, or

(*b*) causes the discontinuance of the employment of any person engaged in such employmer by closing an establishment in which he is engaged,

shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Explanation 1.—Abandonment of employment or absence from duty by any person merely for fear of molestation, intimidation or assault by any person or class of persons shall not constitute a justifiable excuse within the meaning of clause (*i*) (*b*).

Explanation 2.—A person abandons his employment within the meaning of clause (*i*), (*b*), who, notwithstanding that it is an express or implied term of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so, so terminates his employment without the previous consent of the Commissioner of Police, or the District Magistrate or the Additional District Magistrate.

(4) If the person contravening any of the provisions of this section is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

(5) Where any person is prosecuted under clause (*i*) (*b*) or clause (*ii*) of sub-section (*3*), the burden of proving that he had a justifiable excuse shall be on him.

Mr. R. R. BAKHALE : Sir, I beg to move :

In sub-clause (1) of clause 5, for the words " connected with any matter specified in List II or List III in the Seventh Schedule to the Government of India Act, 1935 ", the words " coming within the category of a public utility service as defined in the Trade Disputes Act, 1929, or any other Act for the time being in force, or connected with production, procurement, storage or distribution of food stuffs or cloth " shall be substituted.

The Hon. the PRESIDENT : I should like to know from the hon. Member whether the words " or any other Act for the time being in force " apply to the definition ?

Mr. R. R. BAKHALE : Yes, Sir ; that is so.

Question proposed.

Mr. R. R. BAKHALE : This sub-clause, as amended, will read as follows :—

" If the Provincial Government is of opinion that any employment in the Provincial Government or any other employment or class of employment coming within the category of public utility service as defined in the Trade Disputes Act, 1929, or any other Act for the time being in force or connected with production, procurement, storage or distribution of foodstuffs or cloth is essential for purposes of public safety or maintenance of public order or maintenance of supplies or services essential to the life of the community, it may notify such employment or class of employment in the Official Gazette accordingly and may direct by a general or special order that any person or persons in charge of any such employment or class of employment shall not depart out of such area or areas as may be specified in such order ".

[Mr. R. R. Bakhale]

The point that I make is that Government takes out a certain employment from List II or III of the Seventh Schedule to the Government of India Act and it declares that that employment comes within the purview of this clause. After that declaration is made, no person engaged in the industry can depart out of that area. This List II or III of the Seventh Schedule to the Government of India Act is far too wide. These lists deal with the subjects for legislation by the Provincial Legislature and also with the subjects for concurrent legislation both in the central and provincial legislatures. In my opinion, in a small Bill like this, the insertion of these two huge lists looks bad. What I suggest is that the employment should be limited to public utility services as defined in the Trade Disputes Act. I think the Government purpose will be served by accepting my amendment. The amendment does not seek to deprive Government of any power which they want to possess. I agree that a provision of this type is necessary in the interest public peace and tranquillity for some time to come.

Mr. SHANTILAL H. SHAH : I submit that the hon. Member has not taken into consideration all the contingencies that are likely to arise if this amendment is accepted. The definition in the Trade Disputes Act covers rail transport services, tramways etc. but the bus service is not covered by that definition.

Mr. R. R. BAKHALE : Under the 1946 Act ?

Mr. SHANTILAL H. SHAH : The 1946 Act is not yet in force. I am referring to the Act of 1939. Under that Act, the bus service in the city of Bombay is not covered. Take the production of charcoal. If the production of charcoal, of which there is scarcity at present, is stopped, the life of this city may come to a standstill. I, therefore, submit that such an amendment may cause chaos.

Mr. MORARJI R. DESAI : Sir, after very careful consideration, this provision was made, and it is not possible for me to accept the amendment.

Mr. R. R. BAKHALE : I beg leave of the House to withdraw my amendment.

Amendment, by leave, withdrawn.

Mr. R. R. BAKHALE : Sir, I beg to move—

In sub-clause (1) of clause 5, between the words " shall not " and the words " depart out ", the words " without valid reason " shall be inserted.

Question proposed.

Mr. R. R. BAKHALE : Sir, the clause, as amended by this amendment, will read as follows :—

" Any person or persons engaged in such employment or class of employments shall not depart, without valid reason, out of such area or areas as may be specified in such order."

The only point that I want to make is that in the affairs of a man there are certain occasions when it becomes necessary for him to leave his residence or employment immediately; for instance, there may be serious illness or death or some other calamity in the family. I, therefore, suggest that if the man has got any valid reason to leave, he should be allowed to leave that area or employment.

Mr. MORARJI R. DESAI : A general provision to meet such cases is made in clause 5 (3), but it is not possible to provide for each and every possibility. Sir, I cannot accept the amendment.

Amendment put, and negatived.

Mr. R. R. BAKHALE : Sir, I do not wish to move amendment No. 11, but I will move amendment No. 12. Sir, I beg to move—

In explanation 2, clause 5, for the words " notwithstanding that it is an express or implied term of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so ", the words " without giving, in accordance with an express or implied term of his contract of service or in accordance with the Bombay Industrial Relations Act, 1946, or the Trade Disputes Act, 1929, or any other Act for the time being in force, notice to his employer that he proposes to terminate his employment," shall be substituted.

Question proposed.

Mr. R. R. BAKHALE : This amendment explains the circumstances under which termination of employment can take place under the provisions of this Bill which, otherwise, in the earlier sub-clauses is prohibited. Briefly put, it means this, that whatever the term of employment may be, one cannot abandon one's employment. I want by my amendment to reverse this position. I want that normally the terms of employment should be observed, but if an employe has given notice for termination of his employment under the provisions of any Trade Disputes legislation, he should be allowed to terminate his employment. There are public utility services where 14 days' notice is required for the person to go on strike. He cannot go on strike without giving notice, and if he goes his action becomes illegal. I want all that. If a man goes on strike after giving due notice to his employer under the proper legislation, he should be free to do so, and should not be encumbered by the provisions of this Act. That Sir, is the substance of my amendment.

The Hon. the PRESIDENT : I think amendment No. 13 in the name of the hon. Member Mr. Bakhale may also be taken up together with his amendment No. 12. They are practically two parts of one and the same matter; one deals with giving of notice, and the other deals with the point as to whom the notice should be given. I, therefore, suggest he should move amendment No. 13 now.

Mr. R. R. BAKHALE : Very well, Sir. I beg to move—

In explanation 2, clause 5, for the words " the Commissioner of Police, or the District Magistrate or the Additional District Magistrate ", the words " his employer, and, on his refusing to give the consent, of the officer whom the Provincial Government may appoint under the rules made under the Act ", shall be substituted.

Question proposed.

Mr. R. R. BAKHALE : Sir, under this clause a man has got to take permission to go on leave. This explanation provides that he must take the permission of the Commissioner of Police or the District Magistrate or the Additional District Magistrate. Let me assume that there is a worker engaged in the Ambernath Match Factory at Ambernath. He wants to go on leave on some immediate purpose, say, death or illness in the family, etc. That factory comes under this clause 5. Now, for him it is exceedingly difficult, almost impossible, to approach the District Magistrate, who is not easily accessible, and to take his permission. It amounts to this that he shall not go on leave; he cannot go on leave. In the original Bill, the consent of the employer was put. That was a very sensible provision. The Select Committee converted the employer into the District Magistrate and the Commissioner of Police, and the reason that they gave was that injustice might be done to the person concerned at the hands of the manager. I sympathise with that point of view. But here we have to make a choice between an absolutely impossible thing, and the thing where occasionally a mistake may occur and the man may suffer. But if the consent is left with the employer at least 5 out of 25 persons may get the leave, unless the employer is thoroughly

[Mr. R. R. Bakhale]

a dunce and without any common sense. But this is worse. You are asking a man from Ambernath to go to Thana to the District Magistrate or the Additional District Magistrate for immediate leave. The District Magistrate may be on tour. The Additional District Magistrate may be on leave; both may be out of station, may be shikaring somewhere, may have some I. C. S. dinner or some I. C. S. conference somewhere. Where is the man to go?

Mr. MORARJI R. DESAI: The Additional District Magistrate does not have to go on tour. He remains at the headquarters, and that is why we have also provided for the Additional District Magistrate.

Mr. R. R. BAKHALE: But even there I am pointing to the practical difficulty, and I would prefer the consent of the employer. If the employer refuses the consent, then it would be wise if you appoint some other local authority rather than the District Magistrate for this purpose. We are now having Labour Officers, we are having Conciliation Officers, we are having Subordinate Judges, and these are accessible to an employee more easily than a big officer of the standing of the District Magistrate. I think, Sir, this amendment is very reasonable. We should not be sentimental, but look to the convenience of the person who will be affected. I hope, Sir, these factors would move Government one-hundredth of an inch to consider this matter sympathetically.

Mr. MORARJI R. DESAI: I should like to accommodate the Member but in this particular case what the hon. Member suggests will take away the whole force of the clause.

Mr. R. R. BAKHALE: I am talking about the second amendment.

Mr. MORARJI R. DESAI: I am talking of the first. If the man is allowed to go by giving notice, as the first amendment of the hon. Member seeks to provide, then all will give notice and go. That is what is proposed to be stopped.

By his second amendment, the hon. Member wants to substitute the employer for the Government officers. The word "employer" was removed because in one case the employer might not give leave, while in another case he might. In some cases the employer may give permission, in collusion with the workers. If unfortunately he gives permission to all, how is that to be prevented? The result would be the essential service would not continue. That is why we thought that there must be some Government officer whose permission must be necessary. The fear which the hon. Member has in mind of some genuine cases of men not getting leave, or being put to inconvenience, will be the exceptions and they are not, therefore, sought to be treated under this Bill at all. Nobody will be prosecuted under this enactment, because there is a stray case of some person having gone on leave owing to reasons of health or some domestic calamities. That is not the intention of the Bill. The Bill will be applied when there are concerted efforts to give up work. This Bill is going to be used in emergencies where people go away and leave the work. The hon. Member may say that the penal clause is there and somebody may be harassed, but Government will see that this does not happen. That can easily be done. It is not difficult. But it is impossible to provide for exceptional cases.

Sir, that is the only explanation I can give. I am not able to accept the amendments, and must oppose them.

Amendments Nos. 12 and 13 put, and negatived.

The Hon. the PRESIDENT : Then there is one more amendment to this clause. That is in the name of the hon. Member Mr. Bakhale, No. 14.

Mr. MORARJI R. DESAI : This amendment makes the clause nugatory.

The Hon. the PRESIDENT : The hon. Member wants to incorporate a new clause after clause 5 ; so I shall first put clause 5 to the House. His amendment will be clause 5A.

Clause 5 ordered to stand part of the Bill.

Mr. R. R. BAKHALE : Sir, I beg to move—

At the end of clause 5, the following new clause shall be added :—

5A. Notwithstanding anything contained in section 5, nothing shall affect or be deemed to affect the right of a person to go on leave under the provisions of the Factories Act, 1934, or to abstain from doing work under the provisions of the Bombay Industrial Relations Act, 1946, or the Trade Disputes Act, 1929, or any other Act for the time being in force.

Question proposed.

Mr. R. R. BAKHALE : Sir, the Hon. Minister said that this clause, if accepted, would make the Bill nugatory. I can assure him that if I had thought that that would be the result of this amendment I would never have moved it. Even after his interruption, I do feel that that may not happen, and I shall give reasons.

Under the Factories Act of 1934, as subsequently amended, every industrial employee has got a right to enjoy 10 days' leave with pay. This is a new Act which has come into operation only recently. If this clause 5 is kept as it is, the wording of the clause at any rate, whatever the intentions of the Government may be, leaves absolutely no room for doubt that this right of 10 days' leave is taken away from the worker. Secondly, either under the Central Act of 1929, or of 1946, or under the Provincial Act of 1947, which deal with industrial disputes, any worker of a public utility service particularly, can go on strike after giving notice. I am not an upholder of strikes at all, but the rights of the workers must be safeguarded in the interests of the workers. They cannot be lightly handled or taken away. Now, under those Acts the workers can legitimately go on strike- an action which clause 5 of the Bill prohibits. It is a conflict between a man right under those legislations and the provisions of clause 5 of this Bill. I concede at once without any arguments that circumstances may occur when it would be necessary to curtail even that right in the interest of the community. I concede that. But the Hon. Minister on his side will concede to me this, that such a general provision as this without any restrictions is bound to be abused in some form or another sometime. The Hon. Minister is not going to sit on that bench permanently. Benches will change ; the personnel will change, but the statute and the wording of the statute will remain.

Mr. MORARJI R. DESAI : The benches will remain.

Mr. R. R. BAKHALE : The benches will also change but the wording of the Act will remain till it is amended. Sir, I should not like that we treat this subject lightly. What I was going to suggest was that in order to meet certain situations which might arise you are taking away a statutory right conceded to the workers under certain circumstances. I submit that it is very unfair to do so. On the one hand, Mr. Gulzarilal Nanda gives the worker a right to strike under certain conditions ; on the other hand, the Hon. the Home Minister comes forward and says " Whatever he may have done, I am not going to allow this kind of thing to

[Mr. R. R. Bakhale]

go on and my legislation will prevail". I, therefore, submit that it is a very embarrassing thing. I believe that if you accept this amendment there will be not be the difficulty you contemplate, and by the acceptance of this amendment no power which you have taken under the provisions of the Bill will be taken away.

Mr. MORARJI R. DESAI: Sir, may I refer the hon. Member to (*b*) of sub-clause (*3*) of clause 5 where it is stated:

"Where any employment or class of employments has been notified under sub-section (*1*),

(*i*) every person engaged in such employment,

(*b*) who without justifiable excuse abandons such employment or absents himself from work, or shall on conviction . . . etc."

And what is a justifiable excuse is stated in Explanation 1 to Clause 5. Going on legal leave will be a justifiable excuse. Legal leave is justifiable excuse under the law, and that is not prevented. But there may be a technical strike, and workers may abstain from doing work. That is what will not be allowed. Because if that is allowed, then the whole section becomes ineffective. That is why, it is not possible for me to accept this amendment. It is not necessary to have the first part.

Mr. R. R. BAKHALE: I shall take out what is unnecessary.

Mr. MORARJI R. DESAI: And the rest makes the clause nugatory.

Amendment put, and negatived.

Clause 6 (*Imposition of collective fines*).—

(1) If the Provincial Government is satisfied that the inhabitants of any area are concerned in the commission or abetment of offences affecting the public safety or the maintenance of public order or the maintenance of supplies or services essential to the life of the community or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend the offender or offenders, or are suppressing material evidence of the commission of such offences, the Provincial Government may, by notification in the *Official Gazette*, impose a collective fine on the inhabitants of that area.

(2) Any officer empowered in this behalf by the Provincial Government by general or special order may exercise the power conferred by sub-section (1) on the Provincial Government:

(3) The Provincial Government may make rules prescribing the manner in which an order made by an officer empowered under sub-section (2) shall be published.

(4) The Provincial Government or any officer empowered under sub-section (2) may exempt any person or class or section of such inhabitants from liability to pay any portion of any fine imposed under this section.

(5) The officer empowered under sub-section (2), or if there is no such officer, the Commissioner of Police, or the District Magistrate, or the Additional District Magistrate, as the case may be, shall, after such enquiry as he may deem necessary, apportion such fine in such manner as is deemed proper among the inhabitants who are liable collectively to pay it.

(6) In any such apportionment the officer empowered under sub-section (2) or the Commissioner of Police or the District Magistrate or the Additional District Magistrate may fix the fine to be paid by a Hindu undivided family.

(7) The fine payable by any person (including a Hindu undivided family) may be recovered—

(*a*) in the manner provided by the Code for the recovery of fines imposed by a Court, as if such fine were a fine imposed by a Court:

Provided that the Provincial Government may, in lieu of the rules referred to in sub-section (2) of section 386 of the Code, makes rules under this Act regulating the manner in which warrants under clause (*a*) of sub-section (1) of the said section 386 are to be executed for recovering the fine imposed under this section, and for the summary determination of any claims made by any person other than the person liable to pay the fine in respect of any property attached in execution of the warrant; or

(*b*) as arrears of land revenue.

Sir ABDUL LATIF HAJI HAJRAT KHAN: Sir, I beg to move the following amendment:

In clause 6, delete sub-clause (3) and substitute the following:—

"(3) The Provincial Government may make rules prescribing the manner in which an officer empowered under sub-section (2) shall exercise such powers as may be conferred on him. The rules and orders so made shall be published in the *Official Gazette* and in such other manner as is best calculated to bring to the notice of the inhabitant of the area concerned."

Question proposed.

Mr. MORARJI R. DESAI: Sir, there cannot be any rules for levying collective fines. Collective fines are levied under sub-clause (1) of clause 6. The rules which will be framed will be as regards the manner in which the orders will be executed, and sub-clause (3) was added at the request of a colleague of the hon. Member in the Lower House. This was done at his request. Sir, the amendment is wholly unnecessary and I oppose it.

Amendment put, and negatived.

Mr. R. N. MANDLIK (Kolaba *cum* Ratnagiri):—अध्यक्ष महाराज, या सहाव्या कलमाला माझा विरोध आहे. या कलमात सामुदायिक दंडाची जी कल्पना घुसडली आहे ती मला मुळींच पसंत नाहीं. ही सामुदाइक दंडाची प्रथा पहिल्यानें ९३ कलमी सरकारनें पाडली. पुढें काँग्रेस सरकार आल्यावर ही प्रथा थांबवून लोकांवर यामुळें होत असलेलें अन्याय दूर केला जाईल अशी लोकांची अपेक्षा होती. एकाद्या भागांत दंगा झाला म्हणजे त्या भागांत रहाणाऱ्या लोकांवर त्या दंग्याची जबाबदारी टाकून त्यांच्याकडून सामुदायिक दंड घ्यावयाचा यांत न्याय कसा होतो हें समजत नाहीं. दंगा करणारे लोक एकाद्या भागांत सगळेच नसतात, पण तुमच्या पोलिसांच्या अंगांत कार्यक्षमता नसल्यामुळें म्हणा किंवा इतर कांहीं कारणामुळें म्हणा, दंगेखोरांना ते पकडूं शकत नाहींत. म्हणून त्याचा सूड सरकार त्या भागांत रहाणाऱ्या सर्व लोकांवर दंड बसवून काढणार आहे! गुन्हा करणारे लोक निराळे आणि ज्यांना दंड भरावा लागणार ते लोक निराळे. सामुदायिक दंडाची ही गोष्ट तत्वाच्या दृष्टानें कोणासहि पटण्याजोगी नाहीं. यामुळें होणाऱ्या अन्यायाच्या पुष्कळ गोष्टी उघडकीस आलेल्या आहेत. आता नुकताच रत्नागिरी जिल्ह्यांत कांहीं दिवसांपूर्वी एका गांवाला दंगा झाला होता. त्या दंग्यासंबंधानें अजून खटले कोर्टापुढें चालावयाचेहि आहेत. पण त्यापूर्वी ३० हजारांचा सामुदायिक दंड गांवावर बसविण्यांत आला आहे! ज्या दंग्याचा खटला अजून चालावयाचा आहे व दोषी कोण आणि निर्दोषी कोण ठरावयाचे आहे त्याच्या आधींच हिंदूवर मुसलमानांच्या दुष्कृत्य सामुदायिक दंड बसविणें ही गोष्ट अगदीं अन्यायाची आहे. या प्रश्नाबाबत नामदार मंत्र्यांकडे एक डेप्युटेशन आलें होतें असें मला समजलें, पण दंड प्रत्यक्ष थांबविण्यांत आला किंवा नाहीं याची मला माहिती मिळाली नाहीं. थांबविला नसेल तर निदान खटल्यांची चौकशी होईपर्यंत तरी तो थांबविण्यांत यावा असें मला सरकारला सुचवावयाचें आहे.

दुसरी गोष्ट अशी कीं जो सामुदायिक दंड ठरवावयाचा तो फक्त सरकारी अधिकाऱ्यांनीं ठरविणें इष्ट होणार नाहीं. ज्या ठिकाणीं किंवा गांवांत दंड बसवावयाचा त्या भागांतील आमदार लोकांचा तरी सल्ला याबाबतींत सरकारनें घेणें अत्यंत जरूरीचे आहे. विरोधी पक्षाचे आमदार पाहिजे तर सोडा. परंतु आपल्या काँग्रेस पक्षाच्या आमदारांना तरी ही दंडाची रक्कम ठरवितांना विश्वासांत घ्याल कीं नाहीं? त्या लोकांवरहि तुम्हांला विश्वास ठेवावयाचाच नसेल तर बोलणेंच खुंटलें म्हणावयाचें! तथापि ज्या मतदारांना आजचें सरकार जबाबदार आहे त्यांनीं निवडलेल्या प्रतिनिधींची तरी संमति घेतल्याशिवाय हा सामुदायिक दंड लादणें अन्यायाचें होईल असें मला सरकारच्या निदर्शनास आणावयाचें आहे. दंड ठरविण्याचा हा

[Mr. R. N. Mandlik]

अधिकार केवळ सरकारी अंमलदारांवर सोपविणें योग्य होणार नाहीं. या सर्व कारणांस्तव या कलमांत सामुदायिक दंडाचें जे तत्व सरकारनें घुसडलें आहे त्याला माझा विरोध आहे.

[*Substance of the above in English.*]

Sir, I oppose clause 6. After the passing away of the 93 section regime people were hoping that the system of collective fines would not exist. But unfortunately the Congress Government is also imposing collective fines and naturally, the public has become disappointed. This system is troublesome to the persons who are not involved in the trouble. During the recent riots such fines were imposed in many cases without making proper investigation. I request that this injustice must be stopped as soon as possible, and the necessary amendment made in this clause.

Clause 6 ordered to stand part of the Bill.

The Hon. the PRESIDENT: There are no amendments to clauses 7 to 11.

Sir HAJI ABDUL LATIF HAJI HAJRAT KHAN: I want to move an amendment to clause 7.

Clause 7 (Control of Camps, parades, etc.).

(*1*) The Provincial Government may, by general or special order, prohibit or restrict in any area any exercise, movement, revolution or drill of a military nature specified in the order.

(*2*) With a view to securing that no unauthorised exercise, movement, evolution or drill of a military nature is performed at any place, the Provincial Government may, by general or special order prohibit, restrict or impose conditions on the holding of, or taking part in, any camp, parade, meeting, assembly or procession, by any class of persons or organizations specified in the order.

(*3*) If any person contravenes any order made under this section, he shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

Sir ABDUL LATIF HAJI HAJRAT KHAN: I beg to move:

In clause 7, substitute the following for sub-section (*1*):

"(1) The Provincial Government if satisfied after making proper inquiries, may by general or special order prohibit or restrict in any area any exercise, movement, evolution or drill of a military nature involving violence, likely to endanger public peace, tranquillity and order"

Question proposed.

Sir ABDUL LATIF HAJI HAJRAT KHAN: My submission is that Government may pass orders in the matter only after making proper inquiry and after they are satisfied that such an order is necessary.

Sir FREDERICK STONES: The provision is already there.

The Hon. the PRESIDENT: The hon. Member may give a copy of the amendment to the Hon. the Home Minister.

Mr. MORARJI R. DESAI: I have seen it.

The Hon. the PRESIDENT: Then you can reply to the amendment.

Mr. MORARJI R. DESAI: Sir, it is difficult to say when a drill is held whether it involves violence or not. It may be a preparation for violence. Preparation may start before violence is indulged in. It is very necessary to prevent all attempts at indulging in violence. I oppose the amendment.

[Mr. R. N. Mandlik]

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Mr. MORARJI R. DESAI: Sir, it is difficult to say when a drill is held whether it involves violence or not. It may be a preparation for violence. Preparation may start before violence is indulged in. It is very necessary to prevent all attempts at indulging in violence. I oppose the amendment.

Amendment put, and negatived.

Clause 7 ordered to stand part of the Bill.

Clauses 8, 9, 10 and 11 ordered to stand part of the Bill.

Clause 12 (Jurisdiction of Special Judges)—

A Special Judge shall try such offences or class of offences or such cases or class of cases as the Provincial Government may, by general or special order in writing, direct.

Mr. R. R. BAKHALE : Sir, I beg to move :

In clause 12, for the words " the Provincial Government may, by general or special order in writin direct ", the words " are specified in the Schedule " shall be inserted.

Question proposed.

Mr. R. R. BAKHALE : The original clause reads as follows :—

" A Special Judge shall try such offences or class of offences or such cases or class of cases as the Provincial Government may by general or special order in writing direct ".

Now, there may be cases not coming within the four corners of this Bill, or some offences under the Penal Code or the Criminal Procedure Code. Under this Bill, Government have taken powers to themselves to send to Special Courts such cases as they like, and once a Special Court is seized of those cases, the summary procedure that is prescribed under the Bill operates. It is quite likely that a wrong case or a case which should not have been sent to the Special Court may be sent to the Special Court.

The Hon. the PRESIDENT : The hon. Member may speak on amendment No. 19 which refers to the Schedule.

Mr. MORARJI R. DESAI : If this amendment fails, the other amendment will also fail.

Mr. R. R. BAKHALE : This clause, as I said, so far as the transfer of cases to Special Courts is concerned, is too general and too vague. What I have sought by this amendment to do is that I have defined certain offences and enumerated certain offences under the Penal Code or the Criminal Procedure Code or some other Act for the time being in force and I submit that these offences should be tried by the Special Judges. This is an arrangement which finds a place in the 1908 Criminal Law (Amendment) Act. This is also a provision which finds a place in the 1919 Criminal Law Emergency Powers Act. That is why I have moved this amendment.

4-30 p. m.

Mr. MORARJI R. DESAI : There is a provision like this in the Ordinance. We tried to provide a schedule as suggested by the hon. Member but I find that there will be 300 cases which will come under the schedule. Even if trivial cases are to be sent up to the Special Courts, the work of the Special Courts will suffer. Therefore it is that only important cases will be sent to the Special Court. Sir, I oppose the amendment.

Mr. R. R. BAKHALE : I beg leave of the House to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Clause 13 (*Procedure of Special Judges*).

A Special Judge may take cognizance of offences without the accused being committed to his for trial.

A Special Judge shall ordinarily record a memorandum only of the substance of the evidence witness examined, may refuse to summon any witness if satisfied after examination of the that the evidence of such witness will not be material and shall not be bound to adjourn any any purpos unless such adjournment is, in his opinion, necessary in the interests of justice.

In matters not coming within the scope of sub-sections (*1*) and (*2*), the provisions of the Code, as they are not inconsistent with the provisions of sections 10 to 20, shall apply to the ngs of a Special Judge; and for the purposes of the said provisions, the Court of the Special all be deemed to be a Court of Session.

R. R. BAKHALE: Sir, I beg to move—

sub-clause (2) of clause 13, for the words "ordinarily record a memorandum only of the substance the words "record, or cause to be recorded, in full" shall be inserted.

uestion proposed.

Mr. R. R. BAKHALE: Sir, this clause deals with the manner in which evidence in a Special Court is to be taken. Under this clause, only the substance of evidence is to be recorded. My amendment says that the evidence should be recorded in full.

Now, there is a provision for an appeal to the High Court against the decision of the Special Court and it is desirable, in the interest of meeting the ends of justice, that the evidence taken in the lower Court should be as full as possible so that in some cases, at any rate, the appellants may derive some benefit. But if only the substance of evidence is recorded and if any material point is omitted, the accused has no remedy in the High Court. It is, therefore, necessary that there should be a provision for recording the evidence in full. In moving this amendment, I am suggesting no innovation because even in the emergency legislation provision is made for the recording of evidence in full. I, therefore, hope that Government will have no objection to accepting this amendment. Of course, the time factor will have to be considered.

Mr. MORARJI R. DESAI: Sir, the time factor is very material because these special courts are established in order to give effective but speedy justice, and that has an effect on the situation in communal riots. That is why special courts are provided; otherwise, there was no necessity for establishing special courts. If the special courts were to follow the ordinary court's procedure, no speedy and effective justice can be meted out. In order that there should be no miscarriage of justice, we have provided that in Bombay no person below the rank of a High Court Judge shall be appointed as a Special Judge and outside Bombay the Special Judge shall be a person who has been a Sessions Judge for a period of not less than two years. Suppose 100 witnesses are cited and if the Judge has to record the evidence of all these witnesses in full, then the case will drag on for several days and several judges will have to be appointed. Sir, I oppose the amendment.

Amendment, put, and negatived.

Clause 13 ordered to stand part of the Bill.

Clauses 14, 15, 16 and 17 ordered to stand part of the Bill.

The Hon. the PRESIDENT: Now, we take up clause 18. To this there is an amendment by the hon. Member Mr. Bakhale.

Mr. R. R. BAKHALE: Sir, before I move my amendment I would like to have an explanation. The *habeas corpus* right has to be exercised in the case of people who are in custody. I do not know whether that right is being taken away by the clause.

Mr. MORARJI R. DESAI: No, that right is not taken away.

Mr. R. R. BAKHALE: In that case, I do not wish to move the amendm

Clauses 18 to 28 ordered to stand part of the Bill.

Clause 1 and the Preamble ordered to stand part of the Bill.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. XXV of 194 (A Bill to consolidate and amend the law relating to public safety, maintenance of public order and the preservation of peace and tranquillity in the Province Bombay) be read a third time and passed.

Question proposed.

Sir ABDUL LATIF HAJI HAJRAT KHAN: Sir, I am sorry that I was not present in the House when the motion for the first reading of the Bill was put to vote. It was not my fault; I was under the impression that the discussion would go on for some time. I should not be a party to such a repressive measure, and I must stage a walk-out.

[*Sir Abdul Latif Haji Hajrat Khan then walked out of the Council Chamber.*]

Question put, and agreed to.

The Hon. the PRESIDENT: L. A. Bill No. XXV of 1947 (A Bill to consolidate and amend the law relating to public safety, maintenance of public order, and the preservation of peace and tranquillity in the Province of Bombay) is read a third time and passed.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.